

PROSTITUTION BILL 2011

EXPLANATORY MEMORANDUM

Overview of the Bill

The purpose of the Prostitution Bill 2011 is to prohibit prostitution from residential areas and limit the number of permitted prostitution businesses to a small number of appropriately located areas subject to stringent regulation.

The Bill repeals the *Prostitution Act 2000*, which is the Act currently in operation, and the *Prostitution Amendment Act 2008*, which passed through Parliament but was never proclaimed. The Bill retains many of the provisions of the *Prostitution Act 2000* and provides for the introduction of a regulatory framework and additional police powers to investigate and prosecute illegal prostitution.

The Bill will provide that the current strict prohibition on street workers and people who seek the services of such prostitutes is maintained. The Bill also provides for enhanced provisions to protect children from either being involved in prostitution or exposed to prostitution.

The Bill provides for expanded health provisions in order to minimise the risk of acquiring or transmitting a sexually transmissible infection. Operators of brothels will be required to develop health and drug management plans setting out the steps that will be taken to minimise the risk of prostitutes working for their business and clients acquiring or transmitting a sexually transmitted infection, and how it is proposed to prevent, monitor and deal with the use of prohibited drugs, as a condition of their operator's licence. Self-employed prostitutes will be required to develop a similar plan.

A key element of the Bill is that it provides a strict licensing scheme for operators, managers and self-employed prostitutes which aims to prohibit all forms of prostitution in residential areas. The licensing scheme will require all operators and managers of prostitution business to be licensed, and the business to be conducted in premises that have been approved for that use by the relevant planning authority. Self-employed prostitutes, working either alone or in the company of one other self-employed prostitute, will be permitted, but they will need a prostitute's licence (self-employed) and will also need to work in premises that have been approved by the relevant planning authority.

The Bill provides that WA Police will conduct probity checks on all people who seek to operate a prostitution business or manage such a business. Police may also conduct probity checks on any person seeking to operate as a self-employed prostitute.

The Bill provides that eligibility for all types of licences will be restricted to persons who are aged 18 years or older and who are either a permanent resident of Australia or an Australian citizen. Operators and managers must ordinarily be a resident of Western Australia, and should not have been found guilty of, or have charges pending in connection with, a range of specified offences.

The Bill provides that brothel-based prostitutes will have the option of either applying for a licence, which will mean that they are eligible to work for any licensed operator without having to give further proof of identity in order to conform their eligibility to work as a prostitute; or forgo the licensing option and provide sufficient information to the licensed operator that they are aged 18 or older and are either a permanent resident of Australia or an Australian citizen.

Planning and development controls provided within the Bill mean that no form of prostitution will be lawful in areas zoned residential or mixed residential. The Bill also provides that land that is not zoned residential must not be used for the purposes of a prostitution business if, in the opinion of the relevant planning authority, the land is in an area that contains a significant number of dwellings.

Prostitution businesses will not be permitted within 100 metres of a residential dwelling; or within 200 metres of a protected place, which includes hospitals, places used for education, worship, care or recreation of children or to provide community support or welfare, and places prescribed in the regulations to be attached to this legislation. Special provisions have been developed for the City of Perth to reflect the changes in planning being adopted in the City to provide a unique mix of residential and commercial operations that are in close proximity to each other.

The Bill provides powers that can be exercised by the Governor that provides the Government with ability to determine where prostitution businesses may or may not operate or who can be prohibited from holding a licence under the Act.

The Bill provides that police are empowered to respond to public complaints and to investigate and prosecute individuals operating in residential areas. The Bill provides police with the power to issue a barring notice to prevent a person from entering a specific prostitution business or any place at which a prostitution business is conducted for a period of up to 12 months. The Bill also provides the ability for police to apply to the CEO of the licensing authority that a person be prohibited from being involved in the prostitution industry or entering a prostitution business for a period of up to five years.

In addition, the Bill provides police with the ability to close down illegal prostitution businesses by issuing a closure notice. Issuing a closure notice prevents persons other than those who reside in or own the premises from entering the premises. A closure notice, which ultimately becomes a closure order, can be issued to close the premises for a period of up to six months.

Clause notes

Part 1 – Preliminary

Clause 1 Short title

The short title of the proposed Act is the *Prostitution Act 2011*.

Clause 2 Commencement

Clause 2 sets out the commencement provisions.

Sub paragraph (a) provides that proposed sections 1 and 2 of the proposed Act will come into operation on the day on which the Act receives Royal Assent.

Sub paragraph (b) provides that the rest of the proposed Act will be fixed by proclamation. Different days may be fixed for different provisions.

Clause 3 Terms used

Clause 3 defines certain terms used in the proposed Act to ensure the provisions of the Act are applied as intended. The more important terms are:

act as a prostitute in the proposed Act means to take part, as a prostitute, in an act of prostitution.

act of prostitution in the proposed Act will mean anything the doing of which amounts to prostitution.

CEO is defined to mean the chief executive officer of the Department, which will be the department principally responsible for the administration of the proposed Act.

Commissioner is defined to mean the person holding or acting in the office of Commissioner of Police under the *Police Act 1892*.

dwelling will mean a place or part of a place that is used as a person's residence and it does not matter that it is from time to time uninhabited.

licence will mean an operator's licence, a manager's licence and a prostitute's licence (general) and prostitute's licence (self-employed).

manage in relation to a prostitution business, means undertake the immediate management, direction or control of the conduct of the prostitution business.

manager means a person who manages a prostitution business.

manager's licence is defined to mean a licence issued or renewed under proposed section 57.

operate is defined to mean:

- (a) whether alone or with others, own, operate, or conduct a prostitution business; or
- (b) employ, engage, supervise or direct any person who undertakes the immediate management, direction or control of the conduct of the prostitution business; or
- (c) employ, engage, supervise or direct any person who acts as a prostitute for the prostitution business; or

- (d) exercise or exert, or be in a position to exercise or exert, control or substantial influence over the manner in which the prostitution business is conducted.

operator is defined to mean a person who operates a prostitution business.

operator's licence is defined to mean a licence issued or renewed under proposed section 55.

place is defined to mean anywhere at all, and includes anywhere in or on something that is moving or can move.

prostitute – has the meaning given in proposed section 4.

prostitute's licence (general) is defined to mean a licence of that name issued or renewed under proposed section 58.

prostitute's licence (self-employed) is defined to mean a licence of that name issued or renewed under proposed section 58.

prostitution business is defined to mean a business involving one or more persons taking part in, or being available to take part in, acts of prostitution whether the acts of prostitution take place in the place in which the business is conducted or elsewhere.

self-employed prostitute is defined to mean a person who solely owns, operates and conducts a prostitution business in which:

- (a) only that person takes part in acts of prostitution with clients of the business; and
- (b) that person has full control over his or her individual earnings from taking part in acts of prostitution.

Clause 4 Prostitution

This clause provides a definition of the term **prostitution** which is the same as the definition used in the *Prostitution Act 2000*.

Clause 4 provides that when the Act refers to **prostitution** it means prostitution in which payment is consideration for the sexual stimulation of a person (the **client**) by means of physical contact between the client and another person (the **prostitute**), or between either of them and anything controlled by or emanating from the other, and it is irrelevant whether payment is in money or any other form.

Clause 5 Delegation of CEO's functions

This clause provides for the delegation of CEO functions under the Act.

Subclause (1) provides that the CEO may delegate any power or duty of the CEO under another provision of the Act to another person.

Subclause (2) provides that if the CEO delegates a power or a duty under this Act to another person, it must be in writing and signed by the CEO.

Subclause (3) provides that a person to whom a power or duty is delegated under this proposed section of the Act cannot delegate the power or duty to another person.

Subclause (4) provides that a person who is exercising or performing a power or duty that has been delegated to that person under this proposed section of the Act does so in accordance with the terms of the delegation unless the contrary is shown.

Subclause (5) provides that the nothing in this proposed section limits the ability of the CEO to perform a function through an officer or an agent.

Clause 6 Delegation of Commissioner's functions

This clause provides for the delegation of the functions of the Commissioner of Police under the Act to another person.

Subclause (1) provides that the Commissioner may delegate any power or duty of the Commissioner under another provision of the Act except for functions under sections 95(1), 128, or 152(2) of the Act.

Subparagraph (2)(a) provides that the Commissioner may only delegate the Commissioner's functions under section 95(1) or 152(2) to a police officer of or above the rank of Assistant Commissioner of Police.

Subparagraph (2)(b) provides that the Commissioner may only delegate the Commissioner's functions under section 128 to a police officer of or above the rank of Inspector.

Subclause (3) provides that a delegation made under this proposed section must be in writing and signed by the Commissioner of Police.

Subclause (4) provides that a person that is provided with a power or a duty through a delegation under this proposed section cannot delegate that power or duty to another person.

Subclause (5) provides that a person who is exercising or performing a power or duty that has been delegated to that person under this proposed section is to be done in accordance with the terms of the delegation unless the contrary has been shown.

Subclause (6) provides that nothing in this proposed section limits the ability of the Commissioner to perform a function through an officer or agent.

Clause 7 Service etc. of documents

This clause provides that when a notice or copy of an order is to be given, served or sent it may be given, served or sent in accordance with section 76 of the *Interpretation Act 1984*.

Part 2 – General provisions about prostitution

Clause 8 Term used: public place

This clause provides a definition of the term *public place* used in Part 2 of the Act and is similar to the definition used in the *Prostitution Act 2000*.

Subparagraph (a) defines a public place as any place to which the public, or any section of the public, have or are permitted to have access whether on payment or otherwise.

Subparagraph (b) defines a public place as a school, university or other place of education, other than a part of it to which neither students nor the public usually have access.

Subparagraph (c) defines a public place as a privately owned place that is unoccupied or is occupied by a person who is not an owner of the place and does not have the authority of an owner.

Clause 9 Seeking prostitute in or in view of or within hearing of public place

This clause is similar to a section 5 in the *Prostitution Act 2000*, although the penalty for seeking a child to act as a prostitute in a public place has been increased from 7 years imprisonment to 14 years.

This clause makes it an offence for a person to approach another person in a public place seeking for them to act as a prostitute. This clause provides a greater penalty where the person whom the offender seeks is a child.

Subclause (1) provides that a person must not seek another person to act as a prostitute in the view or within hearing of a public place.

Subclause (2) provides that a person who contravenes subsection (1) is guilty of a crime if that person is seeking a child, or more than one child, to act as a prostitute.

The penalty for contravening proposed subsection (1) will be imprisonment for 2 years imprisonment for a simple offence; or 14 years imprisonment for a crime.

Subclause (3) describes what is meant in proposed subclause (1) when a person (the offender) seeks another person to act as a prostitute.

Subparagraph (a) provides that a person who invites or requests another person to act as a prostitute is seeking another person to act as a prostitute for the purposes of subsection (1).

Subparagraph (b) provides that a person who loiters in or frequents a place for the purpose of, or with the intention of (i) inviting or requesting another person to act as a prostitute; or (ii) receiving an invitation for another person to act as a prostitute is seeking another person to act as a prostitute for the purposes of proposed subsection (1).

Subclause (4) provides the various actions that will not allow the offender to defeat charges for the offence.

Subparagraph (a) provides that it makes no difference whether or not the offender is the prospective client.

Subparagraph (b) provides that it makes no difference whether or not a particular person is sought to act as a prostitute.

Subparagraph (c) provides that it makes it makes no difference whether the offender makes or intends to make the invitation or request directly or through someone else from, the person whom the offender seeks to act as a prostitute.

Clause 10 Seeking client in or in view or within hearing of public place

This clause is similar to a section 6 in the *Prostitution Act 2000*.

This clause makes it an offence for a person to solicit as a prostitute or to seek clients for a prostitute in a public place. This clause provides a greater penalty where the person whom the offender seeks to act as a prostitute's client is a child.

Subclause (1) provides that a person must not seek another person to be a client of a prostitute in or in the view or within hearing of a public place.

Subparagraph (a) provides that the penalty for seeking a client of a prostitute in a public place is imprisonment for 3 years, if the person approached to be a client is a child or more than one child is approached.

Subparagraph (b) provides that the penalty for seeking a client of a prostitute in a public place if the person approached to be a client is not a child is imprisonment for 1 year.

Subclause (2) describes what is meant in subclause 1 when a person (the offender) seeks another person to be a prostitute's client.

Subparagraph (a) provides that a person who invites or requests another person to be a prostitute's client is seeking another person to be a prostitute's client for the purposes of subsection (1).

Subparagraph (b) provides that a person who loiters in or frequents a place for the purpose of, or with the intention of (i) inviting or requesting another person to be a prostitute's client; or (ii) receiving an invitation for another person to be a prostitute's client, is seeking another person to be a prostitute's client for the purposes of subsection (1).

Subclause (3) provides the various actions that will not allow the offender to defeat charges for the offence.

Subparagraph (a) provides that it makes no difference whether or not the offender, or any particular person, is the prospective prostitute.

Subparagraph (b) provides that it makes no difference whether or not a particular person is sought to be a client.

Subparagraph (c) provides that it makes no difference whether the offender makes or intends to make the invitation or request directly or through someone else to, or intends to receive the invitation directly or through someone else from, the person whom the offender seeks to be a prostitute's client.

Clause 11 Seeking to induce person to act as prostitute

This clause is similar to a section 7 in the *Prostitution Act 2000*.

This clause makes it an offence for any person to do anything or refrain from doing anything with the intention of inducing someone to act, or continue to act as a prostitute. The offence is to be a crime which reflects the serious nature of the offence. The clause only relates to adults.

Subclause (1) provides for the things a person must not do with the intention of inducing another person who is not a child to act, or continue to act, as a prostitute or surrender the proceed of acting as a prostitute.

Subparagraph (a) provides that a person must not assault or threaten to assault anyone.

Subparagraph (b) provides that a person must not intimidate anyone.

Subparagraph (c) provides that a person must not supply or offer to supply to anyone a prohibited drug.

Subparagraph (d) provides that a person must not make a false representation or use any false pretence or other fraudulent means.

Subparagraph (e) provides that a person must not use any power or authority arising out of either:

- (i) any occupational or vocational position held by the person; or
- (ii) any relationship existing, or that used to exist, between the person and anyone.

Subparagraph (f) provides that a person must not make an accusation or disclosure, whether it is true or false:

- (i) of any offence committed by anyone; or
- (ii) of any other misconduct that is likely to damage seriously the reputation of anyone; or
- (iii) that anyone is unlawfully in Australia.

Subparagraph (g) provides that a person must not do anything else, or refrain from doing anything.

Subclause (2) provides that a person who contravenes subsection (1) is guilty of a crime and the penalty will be imprisonment for 10 years. A summary conviction penalty for an offence under this clause will be imprisonment for 3 years.

Clause 12 Refusal to take part in act of prostitution

Subclause (1) provides that despite anything that may be in a contract to take part in an act of prostitution, a person who acts as a prostitute has a statutory right to refuse to take part in, or to continue to take part in, an act of prostitution.

Subclause (2) provides that where a person who has entered into a contract to take part in an act of prostitution, for the purposes of criminal law, that contract does not amount to consent if he or she does not consent, or withdraws his or her consent to take part in an act of prostitution.

Subclause (3) provides that nothing in section this proposed section affects a client's right, if any, to rescind or cancel, or recover damages for a contract for taking part in an act of prostitution that is not undertaken.

Clause 13 Client not to take part in, or negotiate, act of prostitution if no licence applies to place

This clause makes it an offence for a client to take part in an act of prostitution or arrange to take part in an act of prostitution in a place other than a place that is a prostitution business complying with the provisions of the Act.

Subclause (1) provides that a person must not take part in an act of prostitution in a place which the person knows or could be reasonably expected to know is not a prostitution business where either a current operator's licence applies, or where a current prostitute's licence (self-employed) applies.

The penalty for the person, as a client, who is not a child at the time the offence was committed, is a fine of \$6,000 for a first offence; and a fine of \$6,000 or imprisonment for one year for a second or subsequent offence.

The penalty for the person, as a client, who is a child at the time the offence was committed, is a fine of \$2,000.

Subclause (2) provides that a person must not in any place enter into, or offer to enter into, an agreement under which the person would take part in and act of prostitution as a client in a place which the person know or could reasonably be expected to know is not a prostitution business where either a current operator's licence applies, or where a current prostitute's licence (self-employed) applies.

The penalty for a person as a client, who is not a child at the time the offence was committed, is a fine of \$6,000 for a first offence; and a fine of \$6,000 or imprisonment for one year for a second or subsequent offence.

The penalty for the person, as a client, who is a child at the time the offence was committed, is a fine of \$2,000.

Clause 14 Persons not to be in prostitution business place unless licences of operator and manager, or self-employed prostitute, displayed

This clause provides penalties for persons who knowingly use the services of an unlawful prostitution business where no operator of the prostitution business holds a current licence which is displayed; or where a manager of the prostitution business does not hold a current licence which is displayed; or where a self-employed prostitute who conducts a prostitution business does not hold a current licence which is displayed.

Subclause (1) provides that a person must not enter or remain in a place which that person knows, or could be reasonably expected to know, that a prostitution business is being conducted unless the provisions under sub paragraphs (a) and (b) apply.

Sub paragraph (a) provides that a person must not enter or remain in a place that is a prostitution business unless that person knows, or it is reasonable for the person to assume, that sections 18(1), (2) or (4) of the Act, which refer to the display of a licence for an operator, manager and self-employed prostitute, as is relevant to the prostitution business, is being complied with.

Sub paragraph (b) provides that a person can enter or remain in place that is a prostitution business that has not complied with sections 17(1), (2) or (4), which refer to the display of a licence for an operator, manager and self-employed prostitute, as is relevant to the prostitution business, if that person has a lawful excuse for entering or remaining in the place. This provides a defence for individuals such as a person who enters a place that is a prostitution business to read the gas or electricity meter, or other similar purpose, by way of example.

The penalty for a first offence under this section will be a fine of \$6,000 for a first offence and for a second or subsequent offence, a fine of \$6,000 or imprisonment for one year.

Subclause (2) provides that without limiting proposed subsection (1)(b), a person who enters a prostitution business that has not complied with sections 17(1), (2) or (4), which refer to the display of a current licence for an operator, manager and self-employed prostitute, has a lawful excuse if they are entering the prostitution business on behalf of an organisation that provides support, health services, education and information to people working in the prostitution industry. This will enable representatives of organisations that work with prostitutes to help maintain good sexual health practices within the prostitution industry, for example, to continue to legally enter a prostitution business that is not complying with the licensing provisions of the Act.

Clause 15 Prohibition on acts of prostitution with person in sexual servitude

This clause aims to protect prostitutes from being controlled by another person for that person's financial gain, and the penalties reflect that there is an emphasis on protecting children and incapable persons from being compelled by another person to take part in an act of prostitution.

Sub clause (1) provides that a person, as client, must not take part in an act of prostitution if the prostitute is being compelled by another person to take part in the act of prostitution.

Sub clause (2) provides that a person who contravenes subsection (1) will be guilty of a crime if the person knows, or could be reasonably expected to know, that the prostitute is being compelled to take part in the act of prostitution.

The penalty for a person, who contravenes subsection (1), for a simple offence, will be imprisonment for 2 years; or for a crime, the penalty will be imprisonment for 20 years if the prostitute was a child or an incapable person at the time of the offence. If the prostitute was not a child or an incapable person, the penalty will be imprisonment for 14 years.

Sub clause (3) provides the definition of the term *incapable person* used in proposed sub clause (2) which is a person who, because of intellectual disability, mental illness, brain damage or senility, is incapable of understanding the nature and effect of an act of prostitution; or of guarding himself or herself against sexual exploitation.

Clause 16 Promoting employment in prostitution industry

This clause is similar to a section 10 in the *Prostitution Act 2000*.

This clause prohibits a person from publishing or causing to be published a statement that is intended or is likely to induce a person to seek work as a prostitute or to work in any capacity in a prostitution business. This clause reflects the Government's view that prostitution should not be normalised under this legislation and prohibits advertisements seeking people to work in any capacity in a prostitution business.

The penalty for contravening this clause is a fine of \$50,000.

Clause 17 Prohibition of certain sponsorships

This clause is similar to a section 11 in the *Prostitution Act*.

Subclause (1) provides the definition of the term *sponsorship* as used in this clause. A broad definition is used in an attempt to ensure arrangements of this nature are not lawfully available within this State. It reflects the Government's view that prostitution should not be normalised under this legislation.

Subparagraph (a) provides that sponsorship in this clause means a scholarship, prize, gift or other similar benefit.

Subparagraph (b) provides that sponsorship in this clause means any financial arrangement (other than a bona fide contract of employment or a bona fide contract for services) for directly promoting or publicising a person or business as referred to in subsection (2)(a) or (b) through any medium.

In subclause (2):

- Subparagraph (a) provides that a person must not promote or publicise, or agree to promote or publicise in this State any person as a prostitute under a contract, or an arrangement (whether or not legally binding), under which a sponsorship is provided, or to be provided, by another person; and
- Subparagraph (b) provided that a person must not promote or publicise, or agree to promote or publicise in this State any prostitution business under a contract, or an arrangement (whether or not legally binding), under which a sponsorship is provided, or to be provided, by another person.

The penalty for contravening this subclause is a fine of \$50,000.

Subclause (3) provides that a person inside the State or outside the State must not provide, or agree to provide a sponsorship in this State under a contract or arrangement of a kind referred to in subsection (2).

The penalty for contravening this subclause is a fine of \$50,000.

Part 3 – Conducting a prostitution business

Clause 18 Display of licence

This clause provides for how licences issued under the provisions of this Act must be displayed to provide certainty to clients of the prostitution business that the business is operating within the provisions of the proposed Act.

Sub clause (1) provides that each operator of a prostitution business must ensure that the current licence or a certified copy of the licence, of each operator of the business is displayed in the prostitution business so that it is visible to a person entering the prostitution business. Each operator who holds a licence must display their licence or a certified copy of the licence at all times during which the prostitution business is conducting a prostitution business in that place whether or not the operator, or any other operator, is present at that place. This provides certainly to the clients, because in order to obtain an operator's licence, the operator will have been issued with an operator's licence from the licensing authority and would have proved to the licensing authority that the prostitution business has received planning approval from the relevant planning authority to operate a prostitution business from that place. The penalty for contravening subsection this subclause will be a fine of \$12,000.

Sub clause (2) provides that a manager of a prostitution business that is being conducted from a place must ensure that his or her current licence or a certified copy of the licence is displayed in the prostitution business while that person is managing the prostitution business so that it is visible to a person entering the prostitution business. The manager's licence need only be displayed during times when they are managing the prostitution business. The penalty for contravening subsection this subclause is a fine of \$12,000.

Sub clause (3) provides that subsections (1) and (2) will not apply to a self-employed prostitute.

Sub clause (4) provides that a self-employed prostitute must ensure that his or her current prostitute's licence or a certified copy of the licence is displayed in the prostitution business to which the licence applies when the person is conducting the business from the place so that it is visible to a person entering the prostitution business. The penalty for contravening this subsection will be a fine of \$2,000.

Sub clause (5) provides that subsection (4) applies whether or not another self-employed prostitute also conducts a prostitution business from the same place.

Sub clause (6) provides that a person must not alter or deface a licence issued under the provisions of the Act. The penalty for contravening subsection (6) is a fine of \$12,000.

Clause 19 Operator not to act as prostitute

Subclause (1) provides that an individual who is an operator of a prostitution business must not take part in an act of prostitution, or be available to take part in an act of prostitution either at the prostitution business to which their operator's licence applies for any other place. The penalty for contravening this subclause will be a fine of \$50,000.

Subclause (2) provides that proposed subclause (1) does not apply to self-employed prostitutes.

Clause 20 Operator or manager must be present

Operators or managers of prostitution businesses have certain obligations under the provisions of the Act and therefore, either an operator or a manager will need to be present at a prostitution business when it is open for business.

Sub clause (1) provides that a person who operates a prostitution business must ensure that either an operator of the business or a manager of the business is present at the prostitution business at all times while the business is open for business. The business should never be open for business unless either an operator or a manager is present. The penalty for contravening this proposed subsection will be a fine of \$24,000 for a first offence; or imprisonment for 3 years for a second or subsequent offence.

Sub clause (2) provides that a person who manages a prostitution business must be present at the prostitution business at all times while the business is open for business during the time they are managing the business. The manager must stay at the place of business while it is open for business. A manager who is managing the business will need to close the business if they leave the business for any reason. The penalty for contravening this proposed subsection will be a fine of \$24,000 for a first offence; or imprisonment for 3 years for a second or subsequent offence.

Clause 21 Person acting as prostitute in a prostitution business must be an employee or contractor

A person who operates or manages a prostitution business will need to ensure that persons that act as a prostitute for the prostitution business enter into a contract of service with the business. This ensures that prostitutes are either employees or independent contractors and therefore they will be workers for the purpose of the worker's compensation legislation and protected under the *Occupational Safety and Health Act 1984*.

Sub paragraph (a) provides that a person who manages or operates a prostitution business must ensure that a person who is to act as a prostitute for the business has entered into a contract of service with the business, or has been engaged to work for the business under a contract for services by a person who operates the business.

Sub paragraph (b) provides that when a prostitute is acting as a prostitute for a prostitution business the prostitute will be acting in the course of his or her employment or engagement under their contracts.

The penalty for contravening this proposed section will be a fine of \$50,000.

Clause 22 Person acting as prostitute in prostitution business must be licensed or verify identity etc.

This clause ensures that only persons who have reached the age of 18 years and are either an Australian citizen or a permanent resident in Australia work as prostitutes in prostitution businesses in the State.

This clause provides that a person who operates or manages a prostitution business must ensure that a person does not act as a prostitute for the business unless that person holds a current prostitutes licence (general), issued by the licensing authority; or an operator of the business is satisfied, and has reasonable grounds to be satisfied, of the prostitute's identity; that the prostitute has reached 18 years of age; and that the prostitute is either an Australian citizen or is permanently resident in Australia. This means that the operator will have seen the person's identifying information and has kept a record of that information while the person acts as a prostitute for that business. The penalty for contravening this proposed clause will be a fine of \$50,000.

Clause 23 Manager not to act as prostitute on same shift

Clause 23 prohibits a person from taking part in, or being available to take part in, an act of prostitution for a prostitution business while they are managing that business. A person can hold both a manager's licence and a prostitute's licence (general) at the same time, but that person will need to undertake the two roles at separate times. If the person is employed by a prostitution business to manage that business on a specific day, that person must not at any time while they are managing that business act as a prostitute. The penalty for contravening this proposed subsection will be a fine of \$50,000.

Clause 24 Prostitution business not to operate from licensed premises

Clause 24 prohibits a person from operating a prostitution business in licensed premises, as defined in section 3(1) of the *Liquor control Act 1988*.

The penalty for contravening this proposed section is a fine of \$50,000.

Clause 25 Restrictions on alcohol

This clause ensures that alcohol is not available for consumption by clients of a prostitution business.

A person who operates or manages a prostitution business must ensure that alcohol is not available for consumption by any client of the business; and that no client is permitted to bring alcohol to a place where the prostitution business is conducted. The penalty for contravening this proposed section is a fine of \$50,000.

Clause 26 Limit on number of prostitution businesses to be conducted from a place

Sub clause (a) provides that a self-employed prostitute must not conduct his or her prostitution business from another prostitution business unless that other prostitution business is conducted by another self-employed prostitute.

Sub clause (b) limits the number of self-employed prostitutes that can conduct a prostitution business at the same place to only two prostitution businesses. Limiting the number to only two self-employed prostitutes, who solely own, operate and conduct a prostitution business, deters the establishment of large collectives of self-employed prostitutes being established.

The penalty for contravening this proposed section will be a fine of \$50,000.

Clause 27 Advertising, signage restrictions

Clause 27 aims to ensure that only prostitution businesses that comply with the provisions of the Act advertise their services. This aims to protect clients of prostitution businesses from accessing illegal prostitution services and limits the ability for illegal operators to advertise their businesses.

Subclause (1) provides that a person must not publish, or place, or seek to place an advertisement for a prostitution business or that a particular person is available to act as a prostitute unless the advertisement is permitted under subsection (2) and either subsection (3) or (4) as it applies to the particular case. The penalty for contravening this proposed subsection is a fine of \$50,000.

Subparagraph (2)(a) provides that an advertisement for a prostitution business or for a particular person who is available to act as a prostitute is permitted if it appears on a webpage, in a directory or in the classified advertisement section of a newspaper or periodical. This enables a prostitution business to place a general advertisement for the business or to advertise the availability of a specific prostitute who works for that business.

Subparagraph (2)(b) provides that an advertisement must not contain the number for any mobile telephone. This ensures that only landline numbers are used in advertisements that are linked to a physical address. This will assist investigations into compliance with the provisions of the Act.

Subparagraph (2) (c) provides that an advertisement permitted under proposed subparagraph (2)(a) must be in accordance with the regulations.

Subclause (3) provides that an advertisement for a prostitution business, if it is not run by a self-employed prostitute, is permitted if it displays the licence number of an operator of the prostitution business.

Subclause (4) provides that an advertisement for one or two self-employed prostitutes is permitted if the advertisement displays the licence number of each self-employed prostitute for which the advertisement applies.

Subclause (5) provides that it is a defence to a charge of an offence under proposed subsection (1) for the accused to prove that he or she believed on reasonable grounds that the advertisement that is the subject of the charge was not for a prostitution business; or that a particular person is available to act as a prostitute.

Subparagraph (6)(a) provides that proposed subsection (5) applies to an accused who is alleged to have published the advertisement that is the subject of the charge; but subparagraph (6)(b) provides that proposed subsection (5) does not apply to an accused who is alleged to have placed, or to have sought to place, the advertisement that is subject to the charge. This seeks to provide protection to a publisher who publishes an advertisement that appears to be for a legal prostitution business, because a licence number may have been included in the information that is provided to the publisher, but that licence number is not a valid licence number.

Subclause (7) provides for the matters that can be included in the regulations.

Subparagraph (a) provides that regulations may provide for what content, whether statements, words or images, that cannot be included in advertisements or signs under proposed subsection (1).

Subparagraph (b) provides that regulations may provide for the dimensions and colour of advertisements permitted under subsection (1) that are placed in a directory or in the classified advertisement section of a newspaper or periodical.

Subparagraph (c) provides that regulations may provide for the location, display, dimensions and colour of, and material constituting signs for prostitution businesses.

Subparagraph (d) provides that the regulations may provide for the colour of, and other means of attracting attention in relation to buildings in which prostitution businesses are conducted.

The purpose of these provisions is to ensure that advertising and promotional material for prostitution businesses does not have a negative impact on the amenity of the community.

Subclause (8) provides that if there is any inconsistency between a local planning scheme as defined in the *Planning and Development Act 2005* section 4(1) and a regulation mentioned in proposed subsection (7), the regulation under the proposed Act will prevail.

Subclause (9) provides that nothing in this proposed section affects the operation of the *Local Government Act 1995* section 3.7.

Clause 28 Obligations of operators and managers as to information about right of refusal

Clause 28 provides that an operator or manager of a prostitution business must prominently display a notice that a prostitute has the right to refuse to take part in an act of prostitution or to refuse to continue to take part in an act of prostitution. This ensures clients are aware that individuals working as prostitutes for the prostitution business can refuse to act as a prostitute for a particular client, or can refuse to continue to take part in an act of prostitution if they so choose. The penalty for contravening this proposed section will be a fine of \$12,000.

Clause 29 Refusal to work as prostitute does not affect entitlements

Subclause (1) provides that the term *refuse* used in section 29 means refuse to take part in acts of prostitution in general, rather than refusing to take part in a particular act of prostitution or at a particular time. This does not refer to individual situations where a prostitute may refuse to take part in an act of prostitution, or continue to take part in an act of prostitution with a particular client.

Subclause (2) provides that a person's entitlements under the *Worker's Compensation and Injury Management Act 1981* will not be affected if he or she is capable of working as a prostitute but refuses to work as a prostitute or continue to work as a prostitute following an injury that results in entitlements under that Act.

Part 4 – Minimising risk of acquiring, transmitting sexually transmissible infections

Part 4 deals with public health issues relevant to prostitution.

Clause 30 Terms used

Clause 30 provides the definition for the terms used in Part 4 of the Act.

bodily fluid means semen, vaginal secretions, saliva or blood.

sheath means a condom, dam or other physical barrier that prevents the transmission of bodily fluid from one person to another; and meets the prescribed standards if standards are prescribed.

STI means a prescribed sexually transmissible infection or a prescribed blood borne virus.

STI-risk contact in subparagraph (a) means direct contact between any part of the genital or anal areas of one person and any part of the genital or anal area of another person. In subparagraph (b) it means direct contact between the genital or anal area of one person and the mouth area, including the lips or the tongue, of another person.

Clause 31 Suitable sheath must be provided, used in certain acts of prostitution

Clause 31 aims to protect prostitutes and their clients from sexually transmitted infections.

Subclause (1) provides that for this proposed section, a sheath is suitable for a particular kind of contact that may result in the transmission of an STI if it is designed to prevent the body fluid of a person going on to any part of the body of another person.

Subclause (2) provides that a person must not take part in an act of prostitution that involves an STI-risk contact without using a sheath that is suitable for the kind of contact that is being conducted between the prostitute and a client. The penalty for contravening proposed subsection (2) will be a fine of \$10,000.

Under subclause (3) an operator or manager of a prostitution business must ensure that suitable sheaths are provided, free of charge, to each prostitute and client to be used by the prostitute and the client to provide protection against sexually transmitted infections. The sheath must be suitable for each particular kind of STI-risk contact that the prostitute may have with the client. The penalty for contravening proposed subsection (3) will be \$12,000

Subclause (4) provides that an operator or a manager of a prostitution business must take all reasonable steps to ensure that a prostitute that is working for the business does not take part in an act of prostitution involving a particular kind of STI-risk contact without using a suitable sheath. The penalty for contravening proposed subsection (4) will be a fine of \$12,000.

Subclause (5) provides that subsections (3) and (4) do not apply to self-employed prostitutes who will take responsibility for their own sexual health.

Clause 32 No representations as to STI infection status

Subclause 32 prevents a person from inducing another person to take part in an act of prostitution without the use of a suitable sheath by stating that they are not infected with an STI.

Subclause (1) provides that a person must not state or imply that a medical examination of that person means that he or she is not infected with an STI, or is unlikely to be infected with an STI for the purposes of taking part in an act of prostitution. The penalty for contravening subclause (1) will be a fine of \$10,000.

Subclause (2) provides that person who operators a prostitution business must ensure that no person working for the business states or implies that a medical examination of a prostitute working for the business means that he or she is not infected with an STI or not likely to be infected with an STI. The penalty for contravening proposed subsection (2) will be a fine of 12,000.

Subclause (3) provides that a person who manages a prostitution business must not state or imply that a medical examination of a prostitute working for the business means that he or she is not infected with an STI or likely to be infected with an STI. The penalty for contravening proposed subsection (2) will be a fine of 12,000.

Subclause (4) provides that only subsection (1) will apply to a self-employed prostitute.

Clause 33 Prohibition on certain acts of prostitution for persons with STI

Clause 33 aims to prevent the spread of STIs within the community. Subsection (1) prohibits a person who has an STI from taking part in an act of prostitution involving STI-risk contact. Contact that does not include STI-risk contact will be permitted. The penalty for contravening subsection (1) will be a fine of \$20,000 for a first offence and 3 years imprisonment for a second or subsequent offence.

Subclause (2) prohibits a person from encouraging a person to act as a prostitute and engage in an act of prostitution involving STE-risk contact if that person knows or could reasonably be expected to know that the prostitute has an STI. The penalty for contravening subsection (2) will be a fine of \$20,000 for a first offence and imprisonment for 3 years for a second or subsequent offence.

Subclause (3) provides a defence to a charge of an offence under proposed subsection (2) for the accused person to prove that he or she exercised all due diligence in relation to their functions under the provision of the Act to prevent a person whom the accused knows, or is reasonably expected to know, has and STI from acting as a prostitute in the prostitution business.

Subclause (4) provides that subsections (1) and (2) apply regardless of whether or not a sheath is used in the act of prostitution involving STI-risk contact.

Clause 34 Further minimising risk of STI acquisition, transmission

Subclause (1) provides that a person who takes part in an act of prostitution must take all other reasonable steps to minimise the risk of acquiring or transmitting an STI. This may include such things as covering a cut or abrasion with a suitable dressing to prevent exposure of blood. The penalty for contravening this section is a fine of \$10,000.

Subclause (2) provides that each person that operates or manages a prostitution business must take reasonable steps to minimise the risk of a prostitute working for the prostitution business, or a client of the business, acquiring or transmitting an STI. Self-employed prostitutes and their clients must also take reasonable steps to minimise the risk of acquiring or transmitting an STI. The penalty for contravening this proposed section is a fine of \$10,000 for a self-employed prostitute, or otherwise, a fine of \$12,000.

Clause 35 Obligations of operators and managers as to health information

Subclause (1) provides a definition of *health information*.

Subparagraph (a) provides that *health information* is information about minimising the risk of acquiring or transmitting STIs and the treatment of STIs.

Subparagraph (b) provides that *health information* is information that has been provided or recommended by the department of the Public Service that is principally assisting in the administration of the *Health Act 1911* or an Act that repeals and substantially replaces that Act.

Subclause (2) provides for the things each operator or manager of a prostitution business is responsible for in relation to health information.

Subparagraph (a) provides that each person who operates or manages a prostitution business must take all reasonable steps to give health information to clients of the business. This can be given orally or in a written format.

Subparagraph (b) provides that each person who operates or manages a prostitution business, except a self-employed prostitute, must take all reasonable steps to give health information to prostitutes working for the business. This can be given orally or in a written format.

Subparagraph (c) provides that each person who operate or manages a prostitution business must display health information prominently at the place where the prostitution business is being conducted.

The penalty for contravening the provisions in subsection (2) is a fine of \$10,000.

Part 5 - Children

Clause 36 Causing, permitting or seeking to induce child to act as prostitute

This clause is similar to a section 16 in the *Prostitution Act*.

This clause makes it an offence for a person to cause or permit a child to act or continue to act as a prostitute. It will also make it an offence for a person to do anything with the intention of inducing a child to act or continue to act as a prostitute. The severity of the penalty reflects the view of the community and the Government that the involvement of children in prostitution is abhorrent and will not be tolerated.

Subclause (1) provides that a person must not cause or permit a child to act, or continue to act as a prostitute.

Subclause (2) provides that a person must not do anything with the intention of inducing a child to act or continue to act as a prostitute.

Subclause (3) provides that a person who contravenes proposed subsection (1) or (2) is guilty of a crime. The penalty for these offences is imprisonment for 14 years.

Clause 37 Obtaining payment for prostitution by a child

This clause is similar to section 17 in the *Prostitution Act 2000*.

This clause creates an offence for receiving payment knowing that the payment has been derived directly or indirectly from a child's involvement in prostitution. The severity of the penalty reflects the view of the community and the Government that the involvement of children in prostitution is abhorrent and will not be tolerated.

The defence clause aims to cover a situation where a payment has been received in the normal course of business unrelated to prostitution. This could include a business receiving rent or mortgage payments from an accused or a solicitor accepting payment from a client after he or she has been convicted of an offence relating to child prostitution.

Subclause (1) provides that a person must not receive a payment in money or in any other form knowing that it or any part of it has been derived either directly or indirectly from a child taking part in an act of prostitution, whether the child was a prostitute or a client of a prostitute.

Subclause (2) provides that a person who contravenes subsection (1) is guilty of a crime. The penalty will be imprisonment for 14 years.

Subclause (3) provides that it is a defence to a charge of an offence under subsection (1) for the accused to prove that the payment was received in the ordinary course of a business unrelated to prostitution.

Clause 38 Agreement for prostitution by child

This clause is similar to a section 18 in the *Prostitution Act 2000*.

This clause creates an offence of entering into an agreement under which a child is to act as a prostitute. The severity of the penalty reflects the view of the community and the Government that the involvement of children in prostitution is abhorrent and will not be tolerated.

Subclause (1) provides that a person must not enter into an agreement, or offer to enter into an agreement under which a child is to act as a prostitute, whether for that person or for anyone else.

Subclause (2) provides that a person who contravenes subsection (1) will be guilty of a crime and the penalty will be imprisonment for 14 years.

Clause 39 Prostitution in place where child present

This clause is similar to a section 20 in the *Prostitution Act 2000*.

This clause creates an offence for taking part in an act of prostitution in a place where a person knows a child is present. The intention is that children and prostitution should not be associated with each other. The penalty for contravening subclause (1) has been amended for consistency with other offences involving children and prostitution in the proposed Act.

Subclause (1) provides that a person must not take part in an act of prostitution in a place where the person knows that a child is present. This applies to a person who acts as a prostitute and to a client of a prostitute if they take part in an act of prostitution in any place where a child is also present. Subparagraph (a) provides that the penalty for contravening subclause (1) for a first offence will be a fine of \$24,000. Subparagraph (b) provides that the penalty for a second or subsequent offence for contravening subclause (1) will be imprisonment for 3 years.

Subclause (2) provides that for the purposes of subsection (1) the place in question, where the act of prostitution takes place and where a child is present, extends as far as the limits up to which either a prostitute or a client taking part in the act of prostitution exercises, or is able to exercise, control over who is allowed to be there.

Subclause (3) provides that it makes no difference whether the control over who is allowed to be there is, or is able to be, is exercised solely or in common with others.

Clause 40 Allowing child to be in place involving prostitution

This clause is similar to section 21 in the *Prostitution Act 2000*.

This clause creates an offence for any person to allow a child to enter or remain in a place where an act of prostitution is taking place, or a business involving the provision of prostitution is being conducted.

Subparagraph (a) provides that a person must not allow a child to enter or remain in a place in which the person knows or could be reasonably expected to know that an act of prostitution is, or may be, taking place.

Subparagraph (b) provides that a person must not allow a child to enter or remain in a place in which the person knows or could be reasonably expected to know that a prostitution business is being conducted.

The penalty for contravening this clause for a first offence will be a fine of \$24,000; and the penalty for contravening this clause for a second or subsequent offence will be imprisonment for 3 years.

Clause 41 Obligations of prostitution business operators in relation to children

This clause will strengthen the protection of children from being involved in prostitution. This clause creates an offence for prostitution business operators who employ a child to act as a prostitute for their business and for managers and operators who allow a child to be present in a place where an act of prostitution is, or may, take place.

Subclause (1) provides that a person who operates a prostitution business must ensure that a child does not work as a prostitute for the business. Proposed section 47 provides that a person who has reached 18 years of age must not act as a prostitute in a place unless that person holds a current prostitute's licence (general) or has complied with proposed section 22(b), which requires an operator to be satisfied, amongst other things, that the person has reached 18 years of age,

Subclause (2) provides that a person who contravenes subclause (1) will be guilty of a crime and the penalty will be imprisonment for 5 years. The penalty for a summary conviction will be imprisonment for 3 years.

Subclause (3) provides that a person who operates or manages a prostitution business must ensure that no child is present in a place at which an act of prostitution is, or may be, taking place for the business. Subparagraph (a) provides that the penalty for contravening subclause (3) for a first offence will be a fine of \$24,000. Subparagraph (b) provides that the penalty for contravening subclause (3) for a second or subsequent offence will be imprisonment for 3 years.

Clause 42 Acting as a prostitute for a child

This clause is similar to a section 15 in the *Prostitution Act*.

This clause prohibits any person from acting as a prostitute for a client who is under 18 years of age and is designed to protect children from involvement in prostitution.

The penalty for a person who acts as a prostitute for a child will be imprisonment for 9 months.

Clause 43 Child not to seek services of prostitute

This clause is similar to a section 19 in the *Prostitution Act*.

This clause makes it an offence for a child to seek another person to act as a prostitute and will apply regardless of whether the seeking occurs in a public or a private place. Provisions similar to those provided for soliciting in public places are provided in respect of the definition of seeking and the exclusion of certain actions as a defence.

Subclause (1) provides that a child must not seek another person to act as a prostitute. The penalty for contravening subclause (1) will be a fine of \$2,000.

Subclause (2) describes what is meant in subclause (1) when a child seeks another person to act as a prostitute for a child

Subparagraph (a) provides that a child who invites or requests another person to act as a prostitute for a child is seeking another person to act as a prostitute for a child.

Subparagraph (b) provides that a child who loiters in or frequents a place for the purpose of, or with the intention of (i) inviting or requesting another person to act as a prostitute for a child; or (ii) receiving an invitation for another person to act as a prostitute for a child, is seeking another person to act as a prostitute for a child.

Subclause (3) provides the various actions that will not allow the offender to defeat charges for the offence.

Subparagraph (a) provides that it makes no difference whether or not the child is the prospective client.

Subparagraph (b) provides that it makes no difference whether or not a particular person is sought to act as a prostitute.

Subparagraph (c) provides that it makes no difference whether the child makes or intends to make the invitation or request directly or through someone else to, or intends to receive the invitation directly or through someone else from, the person whom the child seeks to act as a prostitute.

Part 6 – Licensing

Division 1 – Preliminary

Clause 44 Terms use

Clause 44 defines the terms used in Part 6 of the proposed Act.

health and drug management plan, in relation to a prostitution business or a proposed prostitution business, means a document setting out —

- (a) the steps that will be taken to minimise the risk of any prostitute working for the business, and any client of the business, acquiring or transmitting an STI as defined in section 30; and
- (b) how it is proposed to prevent, monitor and deal with the use of prohibited drugs in the place in which the business is conducted;

incapable person means a person who, because of intellectual disability, mental illness, brain damage or senility —

- (a) is incapable of understanding the nature and effect of an act of prostitution; or
- (b) is incapable of guarding himself or herself against sexual exploitation; or
- (c) in relation to a pending charge against an accused person, is incapable of understanding the nature of the act that is the subject of the charge;

officer, in relation to a company, means a person who is a director, secretary or shareholder of the company;

responsible planning authority, in relation to a place, means the responsible planning authority, as defined in section 79, for the planning scheme, as defined in that section, that applies to the place.

Division 2 – Licences required for certain activities involving prostitution

Clause 45 Operators to be licensed

The issuing of an operator's licence will ensure that the prostitution business has approval to operate as a prostitution business. The operator's licence will be linked to the prostitution business and conditions, dealt with in Division 4, that apply to the licence. Only prostitution businesses that hold a current operator's licence will be legal, (unless it is a prostitution business run by a self-employed prostitute and that person holds a current prostitute's licence (self-employed)). This provides assurance to clients and prostitutes that work for the business that they will not be involved in illegal prostitution.

Subclause (1) provides that a person who is an individual must not operate a prostitution business in a place unless, under subparagraph (a) he or she holds a current operator's licence for the business and the licence applies to the place; and, under subparagraph (b) each other individual with whom the person operates the business holds a current operator's licence for the business and the licence applies to the place. In the case of a company, only those officers who will act as operators will be required to hold an operator's licence.

The penalty for contravening subsection (1) will be a fine of \$50,000 or imprisonment for 3 years.

Subclause (2) provides that subclause (1) does not apply to a self-employed prostitute as they will not be required to hold an operator's licence, only a prostitute's licence (self employed).

Subclause (3) provides that it is a defence to a charge of an offence under proposed subsection (1) for the accused to prove that at the time the accused was operating the prostitution business at the place, under subparagraph (a), the accused was an officer of the company; and, under subparagraph (b), the company held a current operator's licence for the business and the licence applied to the place.

Subclause (4) provides that a company that operates a prostitution business must comply with subparagraphs (a), (b), (c) and (d).

Subparagraph (a) provides that a company that operates a prostitution business must be a proprietary company.

Subparagraph (b) provides that all officers of a company that operates a prostitution business must be individuals.

Subparagraph (c) provides that either, under sub subparagraph (i) a company must be the sole operator of the business; or, under subparagraph (ii) it operates the business with no person other than an officer of the company.

Subparagraph (d) provides that a company must hold a current operator's licence for the business and the licence applies to the place.

The penalty for contravening proposed subclause (4) will be a fine of \$250,000.

Proposed clause 49 provides for who can apply for an operator's licence.

Clause 46 Managers to be licensed

This clause provides that individuals who are employed by operators to manage a prostitution business must hold a current manager's licence.

Subclause (1) provides that a person must not manage a prostitution business unless he or she holds a current manager's licence.

The penalty for contravening subsection (1) will be a fine of \$50,000 or imprisonment for 3 years.

Subclause (2) provides that subclause (1) does not apply to a self-employed prostitute.

Clause 47 Prostitutes to be licensed or to verify identity etc. for operator

A person is required to either hold a current prostitute's licence in order to act as a prostitute working in a prostitution business, or verify their identifying details with the operator of the position business that employs them. A person may also work as a self-employed prostitute, but will be required to hold a current prostitute's licence (self-employed).

Subclause (1) provides that a person who is 18 years or older must not act as a prostitute in a place unless subparagraph (a) or (b) applies.

Subparagraph (a) provides that a current operator's licence must apply to the place where the person acts as a prostitute and the person who is to act as a prostitute must either, under (i), hold a current prostitute's licence (general); or under (ii), there has been compliance with proposed section 22(b) in respect of the person. Proposed section 22(b) provides that the operator of the business is to be satisfied of the prostitute's identify; that the person has reached 18 years of age; and is either an Australian citizen or is permanently resident in Australia

The penalty for contravening subclause (1) is a fine of \$6,000.

Subclause (2) provides that a self-employed prostitute must not operate his or her prostitution business from a place unless she or he holds a current prostitute's licence (self-employed) for the business and the licence applies to the place. Linking the licence to the self-employed prostitute's place of business ensures the prostitute only acts as a prostitute at that place. The penalty for contravening subclause (2) is a fine of \$6,000.

Clause 48 limiting numbers of licences that may be issued for areas, periods

Clause 48 provides that regulations may provide for limiting the number of licences and determining which persons are to be issued with licences.

Subparagraph (a) provides that regulations may provide for the maximum number of each kind of licence that can be issued generally or for a particular area of the State or during a particular period. This provides the Government with the ability to control the size of the prostitution industry in the State.

Subparagraph (b) provides that regulations may provide the procedure for determining which persons are to be issued licences if the number of eligible persons seeking a licence exceeds the number of licences that can be issued. This provides the Government with the ability to control the size of the prostitution industry in the State.

Division 3 – Licence applications

Clause 49 Application for operator’s licence or renewal

The process relating to the application of an operator’s licence provides the licensing authority with the opportunity to assess the suitability of the applicant to operate a prostitution business.

Subclause (1) provides for who applies for an operator’s licence.

Subparagraph (a) provides that an application for the issue or renewal of an operator’s licence for a prostitution business that is proposed to be or is operated by one individual must be made by that individual.

Subparagraph (b) provides that an application for the issue or renewal of an operator’s licence for a prostitution business that is proposed to be or is operated by more than one individual, can be made only if the applicant is one of those individuals.

Subclause (2) provides for who applies for an operator’s licence if the prostitution business is operated by a company.

Subparagraph (a) provides that an application for the issue or renewal of an operator’s licence for a prostitution business that is proposed to be, or is, operated by a company must be made by at least one officer of the company on behalf of the company.

Subparagraph (b) provides that an application for the issue or renewal of an operator’s licence for a prostitution business that is proposed to be, or is, operated by a company may be made by more than one officer, on behalf of the company.

Subclause (3) provides for how an application for the issue or renewal of an operator’s licence for a prostitution business must be made and describes what information must be provided.

Subparagraph (a) provides that the application for an operator’s licence must be made to the CEO in a manner and form approved by the CEO.

Subparagraph (b) provides that an application for an operator’s licence must be accompanied by any document or information specified in the form for either or both of the following:

- (i) verifying the applicant's identity and age;
- (ii) relating to any other applicable matter referred to in proposed section 55, which relates to the issue and renewal of an operator's licence.

Subparagraph (c) provides that an application for an operator's licence must be accompanied by the health and drug management plan for the business.

Subparagraph (d) provides that an application for an operator's licence must give details of the applicant's residential and contact addresses.

Subparagraph (e) provides that an application for an operator's licence must be accompanied by the prescribed fee if a fee applies.

Subclause (4) provides that an application for the issue of an operator's licence for a prostitution business must also include the following information:

Subparagraph (a) provides that an application for an operator's licence must state the address of the place in which the prostitution business is proposed to be conducted (the *place*).

Subparagraph (b) provides that an application for an operator's licence must state that the proposed prostitution business will involve one or more persons taking part in, or available to take part in, acts of prostitution only in the place and not elsewhere.

Subparagraph (c) provides that an application for an operator's licence must be accompanied by evidence of the responsible planning authority's approval for the prostitution business to be conducted in the place.

Subparagraph (d) provides that an application for an operator's licence must, in the case of a prostitution business proposed to be operated by 2 or more individuals, state the name and address of each other individual with whom the applicant proposes to operate the prostitution business.

Subparagraph (e) provides that an application for an operator's licence must, in the case of a prostitution business proposed to be operated by a company, state the name and address of each other person with whom the company proposes to operate the prostitution business.

Clause 50 Application for manager's licence or renewal

The process relating to the application of a manager's licence provides the licensing authority with the opportunity to assess the suitability of the applicant to manage a prostitution business.

Subclause (1) provides that an application for the issue or renewal of a manager's licence must be an individual.

Subclause (2) describes how an application for the issue or renewal of a manager's licence must be made and describes what information must be provided.

Subparagraph (a) provides that an application for the issue or renewal of a manager's licence must be made to the CEO in manner and form approved by the CEO.

Subparagraph (b) provides that an application for the issue or renewal of a manager's licence must be accompanied by any document or information specified in the form for either or both of the following

- (i) verifying the applicant's identity and age;
- (i) relating to any other applicable matter referred to in proposed section 57, which relates to the issue and renewal of a manager's licence.

Subparagraph (c) provides that an application for the issue or renewal of a manager's licence must give details of the applicant's residential and contact addresses.

Subparagraph (d) provides that an application for the issue or renewal of a manager's licence must be accompanied by the prescribed fee if a fee applies.

Clause 51 Application for prostitute's licence or renewal

The process relating to the application of a prostitute's licence provides the licensing authority with the opportunity to assess the suitability of the applicant to act as a prostitute.

Subclause (1) provides that an applicant for the issue or renewal of a prostitute's licence (general) or a prostitute's licence (self-employed) must be an individual.

Subclause (2) provides how an application for the issue or renewal of a prostitute's licence (general) or a prostitute's licence (self-employed) must be made and describes what information must be provided.

Subparagraph (a) provides that an application for the issue or renewal of a prostitute's licence (general) or a prostitute's licence (self-employed) must be made to the CEO in a manner and form approved by the CEO.

Subparagraph (b) provides that an application for the issue or renewal of a prostitute's licence (general) or a prostitute's licence (self-employed) must be accompanied by any document or information specified in the form for either or both of the following:

- (i) verifying the applicant's identity and age;
- (ii) relating to any other applicable matter referred to in proposed section 58, which relates to the issue and renewal of a prostitute's licence.

Subparagraph (c) provides that an application for the issue or renewal of a prostitute's licence (general) or a prostitute's licence (self-employed) must be accompanied by the prescribed fee if a fee applies.

Subclause (3) provides that an application for a prostitute's licence (self-employed) must also include the following information:

Subparagraph (a) provides that an application for the issue of a prostitute's licence (self-employed) must state the address of the place in which the prostitution business is proposed to be conducted (the *place*).

Subparagraph (b) provides that an application for the issue of a prostitute's licence (self-employed) must state whether or not another self-employed prostitute will conduct a prostitution business in the place.

Subparagraph (c) provides that an application for the issue of a prostitute's licence (self-employed) must state that the applicant exercises, or is able to exercise, (whether solely or in common with others) control over who is allowed to be in the place.

Subparagraph (d) provides that an application for the issue of a prostitute's licence (self-employed) must state that the proposed prostitution business will involve the applicant (but no other prostitute) taking part in acts of prostitution with clients of the business, only in the place and not elsewhere.

Subparagraph (e) provides that an application for the issue of a prostitute's licence (self-employed) must be accompanied by evidence of the responsible planning authority's approval for the prostitution business to be conducted in the place.

Subclause (4) provides that an application for the issue or renewal of a prostitute's licence (self-employed) must also be accompanied by the health and drug management plan for the prostitution business.

Clause 52 Taking fingerprints and palm prints

This clause provides for how the CEO requests fingerprints and palm prints to be taken and how the Commissioner responds to the request.

Subclause (1) provides the definition of *applicant* used in the proposed section.

applicant, in the case of an applicant for an application for the issue or renewal of an operator's licence made by an officer of a company, includes:

- (a) each other applicant (if any); and
- (b) each other person who is an officer of the company,

an in the case of an application for the renewal of an operator's licence includes each new officer of the company about whom the CEO is notified under proposed section 71(1).

Subclause (2) provides that the CEO may require an applicant for the issue of a licence or the renewal of a licence to attend a place and have his or her fingerprints and palm prints taken by a police officer or a person of a class specified in the regulations for the purposed of this proposed subsection. The CEO will make the request in writing.

Subclause (3) provides that proposed subsection (2) does not apply to an applicant for the issue or renewal of a prostitute's licence (general) or a prostitute's licence (self-employed) unless the CEO reasonably suspects that a matter relating to the applicant's identity has not been disclosed in the application.

Subclause (4) provides that the CEO does not have to consider an application until there is compliance with each requirement under subsection (2) relevant to the application.

Subclause (5) provides that the application for the issue or renewal of a licence must set out an election to be made by the applicant as to whether the fingerprints and palm prints, or a copy of the fingerprints and palm prints, of an applicant that are taken can be kept by the Commissioner indefinitely or dealt with in accordance with proposed subsections (9) and (10) of the proposed Act. Having the election to enable the Commission to keep such information or destroy the information provides the applicant with a choice at the application stage about the indefinite retention or destruction of their fingerprints and palm prints rather than relying on the applicant to make such a decision at a later time.

Subclause (6) provides that the fingerprints and palm prints of an applicant for a licence under the proposed Act who makes an election under proposed subsection (5)(a) must be kept by the Commissioner in accordance with that election. Unless the applicant changes his or her mind in relation to the election, proposed subsections (9) and (10) do not apply to the prints or to copies of the prints.

Subclause (7) provides for matters the applicant must be informed of before making an election referred to in proposed subsection (5). This includes that:

- (a) the prints may be compared with or put in a forensic database as defined in section 61 of the *Criminal Investigation (Identifying People) Act 2002*;
- (b) the prints may provide evidence that could be used in court against the applicant;
- (c) the applicant may subsequently change the election they made under proposed subsection (5) by notifying the Commissioner;
- (d) the applicant may obtain legal advice before deciding whether or not to have the prints taken and making an election under proposed subsection (5);
- (e) any other matters that may be prescribed.

Subclause (8) provides that information in proposed subsection (7) may be provided in writing.

Subclause (9) provides that if an election is made under proposed subsection (5)(b) the Commissioner must cause fingerprints and palm prints that are taken under this proposed section and any copy of them to be destroyed if the relevant licence is not granted or renewed; or when the relevant licence ceases to have effect.

Subclause (10) provides that if a review is available under proposed section 153 the destruction of fingerprints and palm prints under proposed subsection (9) is not required until the time for applying for the review has expired; and where an application for a review is made, when it has been determined in a way that does not result in the issue or continuation of the relevant licence.

Subclause (11) provides that if a person subsequently changes an election made under subsection (5) and elects that prints taken must be dealt with in accordance with subsection (9) and (10) and the time for destroying the prints has already passed, the Commissioner must arrange for the prints and any copy of them to be destroyed as soon as is practicable after the election has been changed.

Subclause (12) provides that the CEO must provide the Commission with any information that the Commissioner requires to comply with subsection (11).

Clause 53 Further information relevant to application

This clause provide the CEO with the authority to request any further information from an applicant for a licence he or she may require to assist the decision to issue a licence.

Subclause (1) provides that the applicant for the issue or the renewal of a licence must provide the CEO with any additional document or information that the CEO requires that is or could be relevant to making a decision on application for a licence.

Subclause (2) provides that if the CEO requires an additional document or information and requests it under proposed subclause (1), the CEO does not have to consider the application, or consider it further, until the applicant complies with the requirement.

Clause 54 Report of Commissioner

This clause provides the authority for the CEO to seek a background check from the Commission of Police on an applicant for an operator's licence and all officers of a company that is or is to be involved in a prostitution business; all applicants for a manager's licence; and any applicant for a prostitute's licence (general) or a prostitute's licence (self-employed) if the CEO suspects that the applicant may not be suitable to hold such a licence. This will apply to applications for the issue of a licence and to applications for the renewal of a licence.

Subclause (1) provides that the CEO must send a copy of each application for issue or renewal of a licence under the Act to the Commissioner and request a report on the eligibility and suitability of applicant. However, proposed subclause (2) provides that this does not include applicants for the issue or renewal of a prostitute's licence (general) or a prostitute's licence (self-employed) unless the CEO suspects the person is not eligible to hold a licence.

Subparagraph (a) of subclause (1) provides that the CEO will request a report from the Commissioner on the eligibility and suitability of the proposed or current licence holder to hold the licence that is the subject to the application.

Subparagraph (b) of subclause (1) provides that the CEO will request a report from the Commissioner on the eligibility and suitability of each applicant defined in proposed section 52(1) to operate the prostitution business that is the subject of the application. This means that the Commissioner will report on each officer of the company that plans to operate the prostitution business or is currently operating the prostitution business, whichever is relevant to the case.

Subclause (2) provides that proposed subsection (1) does not apply to an application for the issue or renewal of a prostitute's licence (general) or a prostitute's licence (self-employed) unless the CEO reasonably suspects that the applicant may not be eligible or suitable to hold the licence. This provides the CEO with the discretion to be able to establish if the applicant is suitable to hold a prostitute's licence of any type and work in the prostitution industry.

Subclause (3) provides that the Commissioner must provide a report to the CEO as soon as practicable after receipt of the copy of the application or a longer period of time as agreed to between the Commissioner and the CEO if the police require more time to undertake a background check on the history of an applicant.

Clause 55 Issue, renewal of operator's licence

This clause deals with matters the CEO considers before issuing or renewing an operator's licence.

Subclause (1) confirms that proposed subsections (2), (3), (4) and (5) apply to an application for the issue and renewal of an operator's licence for a prostitution business.

Subclause (2) provides that the CEO may issue or renew an operator's licence if satisfied of all of the following matters in relation to the applicant, which are, under:

- (a) the applicant has complied with proposed section 49. Proposed section 49 determines who may apply, how the application is to be made, and the information required as part of the application;
- (b) the applicant is an individual who has reached 18 years of age. This ensures juveniles are not involved in operating prostitution businesses;
- (c) is either an Australian citizen or is permanently resident in Australia. This ensures there is no overseas involvement in the operation of a prostitution business, which would make probity checks difficult to undertake. This also helps reduced the likelihood of the industry becoming controlled by people who live overseas who would have little interest in the impact of their business on the Western Australian community;
- (d) is ordinarily resident in Western Australia. This ensures thorough probity checks can be made by police and helps reduced the likelihood of the industry becoming controlled by people who live outside the State who would have little interest in the impact of their business on the Western Australian community.

- (e) will not hold a manager's licence during the currency of the operator's licence if issued or renewed. This ensures there is clarity in relation to compliance with the various provisions of the Act that relate to the responsibilities of operators and managers;
- (f) will not hold a prostitute's licence (general) or a prostitute's licence (self-employed) during the currency of the operator's licence if issued or renewed, to ensure there is clarity in relation to compliance with the various provisions of the Act that relate to the responsibilities of operators and prostitutes;
- (g) is not the subject of a violence restraining order as defined in the *Restraining Orders Act 1997* section 3. This ensures that individuals who have a history of violence, or violent offending are not involved in the operation of a prostitution business;
- (h) complies with any other prescribed matter.

Subclause (3) provides that when an application for an operator's licence has been made, the CEO may issue or renew an operator's licence if satisfied of all matters in subparagraphs (a) to (g) in relation to each applicant and, in the case of an application on behalf of a company, the company. The CEO must be satisfied that and applicant or company:

- (a) has not had any licence issued under this Act revoked within the period of 5 years ending on the day on which the application is made. This will include any type of licence issued under the Act and assists in excluding individuals who have committed offences under the Act from the industry for at least 5 years;
- (b) has no charge pending of an alleged offence under the law of this State, the Commonwealth, another State or Territory that involves an act of violence against the person or involves a victim who was a child or incapable person. This will ensure known violent persons are kept out of the prostitution industry;
- (c) has not been declared under the *Misuse of Drugs Act 1981* section 32A to be drug trafficker. This reduces the risk of known drug traffickers being involved in the prostitution industry;
- (d) has not been found guilty of an offence set out in Schedule 1 in the Act; or under the law of the Commonwealth, another State or Territory, that the CEO considers to be substantially similar to an offence set out in Schedule 1 of the Act. This ensures no one with a history of serious offending are involved in the operation of a prostitution business;
- (e) has not been convicted, in this or another State or Territory, of any indictable offence, including an offence under the law of the Commonwealth, any other State or Territory, that is triable by jury that the CEO considers would make it inappropriate for the CEO to issue the licence. This ensures no one with a history of serious offending are involved in the operation of a prostitution business;
- (f) is a person suitable to hold an operator's licence; and
- (g) complies with any other prescribed matter.

Subclause (4) provides that when an application has been made, the CEO may issue or renew an operator's licence if satisfied that the health and drug management plan for the prostitution business or proposed prostitution business is appropriate. The plans aim to maintain the health of prostitutes working for the prostitution business and their clients.

Subclause (5) provides that when an application has been made, the CEO may issue or renew an operator's licence if satisfied that the application complies with any other prescribed matter.

Subclause (6) provides that the CEO may issue or renew an operator's licence to a company if the CEO is satisfied that the company complies with proposed section 45(4)(a) and (b) and will comply with section 45(4)(c), (which relate to the structure of the company and that the company should be a sole operator), during the currency of the operator's licence if issued or renewed.

Subclause (7) provides that on application for the issue of an operator's licence for a prostitution business the CEO may issue an operator's licence if satisfied of all of the following matters, that:

- (a) the proposed prostitution business will involve one or more persons taking part in, or available to take part in, acts of prostitution only in the place stated in the application under section 49(4)(a) and not elsewhere.
- (b) the responsible planning authority has given its approval for the prostitution business to be conducted in that place.
- (c) the approval is in accordance with the provisions of Division 8.

This will ensure the prostitution business does not operate as an escort agency; and that the prostitution business complies with the planning provisions of the Act and is not situated in an area where a prostitution business is prohibited by the Act

Subclause (8) provides that on an application by or on behalf of a person for the person's first operator's licence for a prostitution business the CEO may issue the operator's licence if satisfied that neither the person nor any applicant will hold an operator's licence for another prostitution business during the currency of the operator's licence if issued. This ensures that all individuals who hold an operator's licence are only involved with the operation of one prostitution business when they hold their first operator's licence.

Subclause (9) provides that if an application for the issue or renewal of an operator's licence is made by one or more officers of a company on behalf of the company, the CEO may issue or renew the licence if satisfied with the following matters with respect to each other person who is an officer of the company:

- (a) of any matter referred to in this proposed section of which the CEO would need to be satisfied if that person were an applicant; and
- (b) that each of those persons who has been required under proposed section 52(2) to have his or her fingerprints or palm prints taken has complied with the requirement.

This will provide the CEO with the power to require all officers of a company involved with the operation of a prostitution business to be assessed for their suitability to be involved in the business.

Subclause (10) provides that the CEO must not renew an operator's licence if, since the licence was issued or most recently renewed, the land that is used for the purposes of the prostitution business to which the licence relates has become part of a residential area as defined in proposed section 79 of the Act. This is to ensure that prostitution businesses do not operate in residential areas.

Subclause (11) provides that the CEO must not issue or renew an operator's licence unless the CEO is satisfied of all matters referred to in this section that applies to the particular application.

Clause 56 One person may hold up to 3 operator's licences

This clause provides that if a person's first operator's licence has been renewed and the persons listed in subparagraphs (a), (b) and (c) have not been convicted of an offence under the Act, a separate operator's licence may be issued to that person for 2 or 3 prostitution businesses operated by that person.

Subparagraph (a) provides that each operator of the business the person's first operator's licence was linked to must not have been convicted of an offence under the Act.

Subparagraph (b) provides that if the operator of the business the person's first operator's licence was linked to is a company, each of its officers must not have been convicted of an offence under the Act.

Subparagraph (c) provides that each manager of the business the person's first operator's licence was linked to must not have been convicted of an offence under the Act.

This clause will provide an incentive to fully comply with the provisions of the Act so that after 3 years operating a prostitution business within the provision of the Act an operator has the ability to apply for up to 2 more individual operator's licences. No more than 3 will be permitted to reduce the risk of just a few individuals controlling most or all prostitution businesses in Western Australia.

Clause 57 Issue, renewal of manager's licence

Subclause 57 provides that on application for the issue or renewal of a manager's licence, the CEO may issue or renew the licence if satisfied of all of the things set out in subparagraphs (a) to (n). These are:

- (a) the applicant has complied with section 50. Proposed section 50 determines who may apply, how the application is to be made, and the information required as part of the application.
- (b) the applicant is an individual who has reached 18 years of age. This ensures juveniles are not involved in managing prostitution businesses.
- (c) the applicant is either an Australian citizen or is permanently resident in Australia. This ensures there is no overseas involvement in the management of a prostitution business, which would make probity checks difficult to undertake. This also helps reduced the likelihood of the industry becoming controlled by people who live overseas who would have little interest in the impact of their business on the Western Australian community;
- (d) the applicant is ordinarily resident in Western Australia. This ensures thorough probity checks can be made by police and helps reduced the likelihood of the industry becoming controlled by people who live outside the State who would have little interest in the impact of their business on the Western Australian community.
- (e) the applicant will not hold, or be an applicant for, an operator's licence during the currency of the manager's licence if issued or renewed. This ensures there is clarity in relation to compliance with the various provisions of the Act that relate to the responsibilities of operators and managers;
- (f) the applicant has not had any licence issued under this Act revoked within the period of 5 years ending on the day on which the application is made. This will include any type of licence issued under the Act and assists in excluding individuals who have committed offences under the Act from the industry for at least 5 years;
- (g) the applicant has no charge pending of an alleged offence under the law of this State, the Commonwealth, another State or a Territory that involves an act of violence against the person or involves a victim who was a child or incapable person. This will ensure known violent persons are kept out of the prostitution industry.
- (h) the applicant has not been declared under the *Misuse of Drugs Act 1981* section 32A to be a drug trafficker. This reduces the risk of known drug traffickers being involved in the prostitution industry.

- (i) the applicant has not been found guilty of an offence set out in Schedule 1 in the Act; or under the law of the Commonwealth, another State or a Territory, that the CEO considers to be substantially similar to an offence set out in Schedule 1 of the Act. This ensures no one with a history of serious offending are involved in the management of a prostitution business;
- (j) the applicant has not been convicted, in this or another State or a Territory, of any indictable offence, including an offence under a law of the Commonwealth, any other State or a Territory, that is triable by jury that the CEO considers would make it inappropriate for the CEO to issue the licence. This ensures no one with a history of serious offending are involved in the management of a prostitution business.
- (k) the applicant is not the subject of a violence restraining order as defined in the *Restraining Orders Act 1997* section 3; This ensures that individuals who have a history of violence, or violent offending are not involved in the management of a prostitution business.
- (l) the applicant is a person suitable to hold a manager's licence;
- (m) the applicant complies with any other prescribed matter;
- (n) the application complies with any other prescribed matter.

Clause 58 Issue, renewal of prostitute's licence

Subclause (1) provides that on application for the issue or renewal of a prostitute's licence (general) or a prostitute's licence (self-employed) the CEO may issue or renew the licence if satisfied of all of the things set out in subparagraphs (a) to (h). These are:

- (a) the applicant has complied with proposed section 51. Proposed section 51 determines who may apply, how the application is to be made, and the information required as part of the application.
- (b) the applicant is an individual who has reached 18 years of age. This ensures juveniles are not involved in acting as a prostitute for a prostitution business.
- (c) the applicant is either an Australian citizen or is permanently resident in Australia. This ensures that persons who are overseas residents, and in Western Australia on a visa are not involved in acting as a prostitute for a prostitution business, which would make probity checks difficult to undertake, if required by the CEO.
- (d) the applicant will not hold an operator's licence during the currency of the prostitute's licence (general) or a prostitute's licence (self-employed) if issued or renewed. This ensures there is clarity in relation to compliance with the various provisions of the Act that relate to the responsibilities of operators and prostitutes;

- (e) the applicant has not had any licence issued under this Act revoked within the period of 5 years ending on the day on which the application is made. This will include any type of licence issued under the Act and assists in excluding individuals who have committed offences under the Act from the industry for at least 5 years;
- (f) the applicant is a person suitable to hold the licence that is the subject of the application.
- (g) the applicant complies with any other prescribed matter.
- (h) the application complies with any other prescribed matter.

Subclause (2) provides that on application for the issue of a prostitute's licence (self-employed) the CEO may issue the licence if satisfied of the things set out in subparagraphs (a) to (e). These are:

- (a) no more than one other self-employed prostitute will conduct a prostitution business in the place stated in the application under proposed section 51(3)(a) (the *place*). This enables a person to work independently as a self-employed prostitute either alone or with one other self-employed prostitute. Limiting the number of self-employed prostitutes to just two will prevent the establishment of large scale prostitution businesses that attempt to avoid the requirements of the Act relating to operators and managers.
- (b) the proposed prostitution business will involve the applicant (but no other prostitute) taking part in acts of prostitution with clients of the business, only in the place and not elsewhere. This ensures that acts of prostitution only occur at the place stated in their licence application, i.e. it prevents the self-employed prostitute from acting as an escort.
- (c) the applicant exercises, or is able to exercise, (whether solely or in common with others) control over who is allowed to be in the place. This ensures that the self-employed prostitute runs his or her prostitution business independently and is not influenced by another person.
- (d) the responsible planning authority has given its approval for the prostitution business to be conducted in the place. The self-employed prostitute will need to obtain approval from the responsible planning authority to use the place where he or she runs her or his prostitution business prior to making an application for a prostitute's licence (self-employed).
- (e) the approval is in accordance with the provisions of proposed Division 8. Proposed Division 8 deals with planning and development controls.

Subclause (3) provides that on an application for the issue or renewal of a prostitute's licence (self-employed) the CEO may issue or renew the licence if satisfied that the health and drug management plan for the prostitution business or proposed prostitution business is appropriate. The plans aim to protect the health of prostitutes working for the prostitution business and their clients.

Subclause (4) provides that the CEO must not issue or renew a prostitute's licence (general) or a prostitute's licence (self-employed) unless the CEO is satisfied as to each of the matters referred to in this section that applies to the particular application.

Clause 59 Reasons for refusal to issue, renew licence

Subclause (1) provides for the things the CEO must do if he or she refuses to issue or renew a licence.

Subparagraph (a) provides that the CEO is to record the grounds on which a decision to refuse to issue or renew a licence is based, and the reasons for the decision.

Subparagraph (b) provides that as soon as is practicable after making the decision, the CEO is to give to the person to whom the decision relates written notice of the decision, together with those grounds and reasons and the person's right of review under proposed section 153.

Subclause (2) provides that nothing in subsection (1) requires or authorises the CEO to disclose confidential police information.

Division 4 – Licence conditions

Clause 60 Conditions generally

Subclause (1) provides, under subparagraph (a), that a licence is subject to any conditions imposed by the CEO under proposed section 64. Under subparagraph (b), a licence is subject to any other conditions imposed under the Act.

Subclause (2) provides that the regulations may provide for conditions of licences.

Clause 61 Condition as to change of location of business

The CEO must be informed of any change in location of a prostitution business. This is to ensure that the licensing authority knows the location of legal prostitution businesses for compliance purposes.

Subclause (1) provides that it is a condition of every operator's licence and every prostitute's licence (self-employed) that there must be no change in the location of the place in which the prostitution business to which the licence applies is conducted without the approval of the CEO.

Subclause (2) provides that an application for the CEO's approval under subsection (1) must be accompanied by information set out in subparagraphs (a) and (b).

Subparagraph (a) provides that the information to be provided to the CEO must be accompanied by evidence of the responsible planning authority's approval for the prostitution business to be conducted in the new place.

Subparagraph (b) provides that the information to be provided to the CEO must be accompanied by the prescribed fee if a fee applies.

Subclause (3) provides that the CEO must not approve a change in the location of the place in which the prostitution business is conducted unless the CEO is satisfied of certain matters. These include that:

- (a) the responsible planning authority has given its approval for the prostitution business to be conducted in the new place; and
- (b) the approval is in accordance with the requirements of proposed Division 8; and
- (c) it is otherwise appropriate to approve the change.

Clause 62 Condition as to size of business

This clause provides that every operator's licence will include a condition to limit the size of prostitution businesses to minimise the impact on the amenity of the community.

Subparagraph (a) provides that every operator's licence will include a condition that the place in which the prostitution business is conducted must not have more than the prescribed number of rooms in which persons may take part in acts of prostitution.

Subparagraph (b) provides that every operator's licence will include a condition that no more than the prescribed number of persons act, or are available to act, as prostitutes in the place at the same time.

Clause 63 Conditions of operator's licences as to records to be kept

Prostitution business operators must keep records of either the licence number and copy of a licence held by a person who acts as a prostitute for the prostitution business, or the identifying information of a person who acts as a prostitute for the prostitution business who does not hold a licence. This clause describes the manner in which these records are to be kept. Confidentiality of personal information about persons who act as a prostitution is to be maintained at all times and must only be accessed as per the provisions of the Act.

Subclause (1) provides that in this proposed section the term *business*, in relation to an operator, means the prostitution business to which the operator's licence applies.

Subclause (2) provides details of all the things that must be kept under a condition of every operator's licence.

Subparagraph (a) provides that a record of the licence number of each licensed prostitute who enters into a contract of service with, or is engaged to work for the purposes of the business under a contract for service must be kept by the operator as a condition of an operator's licence.

Subparagraph (b) provides that a copy of the licence of each prostitute mentioned in paragraph (a) must be kept by the operator as a condition of an operator's licence.

Subparagraph (c) provides that a record of the name, date of birth (to establish the person is 18 years or older) and residency status of each unlicensed prostitute who enters into a contract of service with, or is engaged to work for the purposes of the business under a contract for services by, a person who operates the business must be kept by the operator as a condition of an operator's licence.

Subparagraph (d) provides that a record of the start and finish dates for each contract mentioned in paragraph (a) or (c) must be kept by the operator as a condition of an operator's licence.

Subclause (3) provides that it is a condition of every operator's licence that the operator must ensure certain things. These include that:

Under subparagraph (a) a paper copy of each document that provides proof of the name, date of birth and residency status of each unlicensed prostitute mentioned in subsection (2)(c) is kept.

Under subparagraph (b) no copy of the document is made or kept in electronic form.

Under subparagraph (c) the copy is kept secure from unauthorised access.

Under subparagraph (d) the copy is kept for the period that expires 3 months after the last day on which the unlicensed prostitute worked for the business.

Under subparagraph (e) the copy is destroyed on the expiration of that period, i.e. 3 months.

Subclause (4) provides that it is a condition of every operator's licence mentioned in proposed subsection (2) or (3) that the operator must ensure that any record or document kept as required under either of those subsections can be inspected at any time by, and on the request of, the CEO, an authorised person as defined in proposed section 92 or a police officer.

Subclause (4) provides that a request mentioned in proposed subsection (4) must not be made unless it is made for compliance purposes as defined in proposed section 101(1).

Clause 64 Conditions imposed by CEO

The CEO will be provided with power to impose conditions on a licence at any time. This provides the CEO with a mechanism to change the conditions of any licence to meet any change in policy or any other circumstance that has an impact on the prostitution industry or the local community, or the operation of a particular prostitution business.

Subclause (1) provides that the CEO may impose conditions on a licence when issuing or renewing the licence; or during the currency of the licence.

Subclause (2) provides that the CEO may vary or revoke conditions imposed under the proposed section on the CEO's own initiative or on application of the licence holder.

Subclause (3) provides that an application of a licence holder must be accompanied by the prescribed fee, if a fee applies.

Subclause (4) provides that without affecting the generality of the CEO's discretion to impose conditions under this proposed section, the CEO may impose a number of conditions set out in subparagraphs (a), (b) and (c). These include:

Under subparagraph, (a) the CEO may impose a condition as to the maximum number of staff that may, at the same time, be in a place in which a prostitution business is being conducted; or

Under subparagraph (b) the CEO may impose a condition which the CEO considers to be in the public interest; or

Under subparagraph (c) the CEO may impose a condition which the CEO considers desirable in order to minimise the offence, annoyance, disturbance or inconvenience that might be caused to those who reside or work in the vicinity of the place at which the prostitution business is conducted, or to persons in or making their way to or from a place of public worship, hospital or school, in consequence of activities in the place or the conduct of those making their way to or from the place.

Subclause (5) provides that if an imposition, variation or revocation of a condition is made during the currency of the registration of a person, it will not take effect until written notice is given to the person and this will include the reasons for the decision, and notice of the person's right of review under proposed section 153.

Subclause (6) provides that nothing in subsection (5) requires or authorises the CEO to disclose confidential police information.

Clause 65 Compliance with conditions

This clause provides the penalties that apply if a person contravenes a condition of a licence.

Subclause (1) provides that a person to whom a licence is issued must not contravene a condition of a licence. The penalty for contravening this clause will be a fine of \$50,000.

Subclause (2) provides that each officer of a company that holds an operator's licence must ensure that the conditions of the licence are not contravened. The penalty that applies to this subclause is a fine of \$50,000.

Division 5 – Other matters about licences

Clause 66 Duration of licence

This clause provides details of the duration of licences issued under the Act.

Subclause (1) provides that a licence may be issued or renewed for a period not exceeding 3 years.

Subclause (2) provides that the duration of a licence must be stated in the licence.

Subclause (3) provides that if a licence is renewed after the day on which it expired, but within 28 days of it expiring, the renewal is to be taken to have taken effect on the day immediately after the day on which the licence expired.

Clause 67 Licence not transferable

This clause provides that a licence issued under the Act is not transferable.

Clause 68 Register of licence holders

This clause provides for how the register held by the licensing authority is to be managed. The provisions have been drafted to address community concerns about the confidentiality of the register and that the information will not be accessed by unauthorised persons.

Subclause (1) provides that the CEO must keep an accurate and up-to-date register, in a manner and form that is to be determined by the CEO. The register will include information of all of the following:

- (a) current and former operator's licences;
- (b) current and former manager's licences;
- (c) current prostitute's licences (general); and
- (d) current prostitute's licences (self-employed).

Subclause (2) provides details of what information is to be held on the register of each licence holder mentioned in subsection (1)(a) and (b). The CEO must record all of the following:

- (a) the name of the licence holder;
- (b) the business address or other address of the licence holder;
- (c) the conditions imposed under section 64 that are current;
- (d) details of the suspension or revocation of a licence of the licence holder under section 73; and
- (e) such other information, if any, as is prescribed.

Subclause (3) provides that the CEO must also record the following information in respect of each licence holder mentioned in subsection (1)(a):

- (a) the name and address of any other individual with whom the operator, if an individual, operates or operated the operator's prostitution business; and
- (b) the address of the place in which the operator's prostitution business is or was conducted.

Subclause (4) provides that the CEO must record all of the following information in respect of each licence holder mentioned in subsection (1)(c) and (d):

- (a) the name of the licence holder;
- (b) the conditions imposed under section 64 that are current;
- (c) details of the suspension or revocation of a licence of the licence holder under section 73;
- (d) in the case of a self-employed prostitute, the address of the place in which the prostitution business is conducted; and
- (e) such other information, if any, as is prescribed.

Subclause (5) provides that the CEO must cause all the details about the holder of a prostitute's licence (general) or a prostitute's licence (self-employed) that no longer has effect to be removed from the register as soon as practicable after the licence ceases to have effect. This means that once the term of a licence has expired, or otherwise has no effect, the details of the licence holder will be removed from the register. The licensing authority will develop appropriate systems to enable the removal of the details as soon as possible after the license no longer has effect. This will provide a level of comfort to holders of prostitute's licences (general) and prostitute's licences (self-employed) that there will be no long-term record held on the register once they have left the prostitution industry and their licence has expired or has been cancelled or revoked.

Subsection (6) provides that proposed subsection (5) will apply despite any requirement under the *State Records Act 2000* in relation to the keeping and destruction of records.

Clause 69 Inspection of register

This clause provides details of who can access details held on the register.

Subclause (1) provides the meaning of the term *officer* in this section:

Officer means –

- (a) a police officer, or
- (b) a person of a class specified in the regulations for the purposes of this definition.

Subclause (2) provides that the register must be available for inspection by an officer during normal office hours.

Subclause (3) provides that the register may be made available electronically for inspection by an officer.

Subclause (4) provides that an officer may, on application to the CEO, obtain a certified copy of the register or an entry. A payment of the prescribed fee will be required, if a fee applies.

Subclause (5) provides that no fee is payable under subsection (4) if the application is made by a police officer for the purpose of performing a function of a police officer under this Act.

Clause 70 Licence document

This clause provides details about the licence document issued under the provisions of the Act.

Subclause (1) provides that a licence that is issued or renewed under the Act must be in a form approved by the CEO.

Subclause (2) provides that the CEO must give the licence holder a new licence if the CEO renews a licence.

Subclause (3) provides that the CEO may, on payment of the prescribed fee, if a fee applies, issue a certified copy of a licence to the holder of the licence.

Subclause (4) provides that if a licence is suspended or revoked the person who was the holder of the licence must, as soon as practicable after the suspension or revocation, ensure that the licence document is returned to the CEO. A penalty for contravening this subclause will be a fine of \$6 000.

Subclause (5) provides that proposed subsection (4) does not apply if the person has a reasonable excuse.

Clause 71 CEO to be notified of certain matters affecting licences

This clause provides details of the responsibilities of the licence holder to inform the CEO of any changes in circumstances that will have an impact on the licence issued under the provisions of the Act. Penalties will apply for failure to notify the CEO of certain notifiable matters.

Subclause (1) provides that a person who holds an operator's licence must ensure that the CEO is given notice in writing of any notifiable matter as defined in subsection (2) within 7 days after becoming aware of the matter. The penalty for contravening this proposed sub section is a fine of \$24 000 or imprisonment for 2 years.

Subclause (2) provides that the definition of *notifiable matter* referred to in subsection (1) is defined as follows:

notifiable matter, in relation to a prostitution business, means any of the following:

- (a) a charge of the commission of an offence under this Act being made against:
 - (i) an operator or a manager of the business; or
 - (ii) a person who is an officer of the company if a company is the licence holder.
- (b) a charge of the commission of an indictable offence being made against:
 - (i) an operator or a manager of the business; or
 - (ii) a person who is an officer of the company if a company is the licence holder.
- (c) if a company is the licence holder, a person ceasing to be an officer of the company or a person, not already an officer of the company, becoming an officer of the company, and that persons' name and address;
- (d) a change in the name or address of any operator of the business and, if a company is the licence holder, any officer of the company;
- (e) the name and address of any person who joins the licence holder in operating the business whether or not, if a company is the licence holder, that person is also an officer of the company.

Subclause (3) provides that a person who holds a prostitute's licence (self-employed) must give the CEO notice in writing of any notifiable matter as defined in subsection (4) within 7 days after becoming aware of the matter. The penalty for contravening this subclause is a fine of \$24 000.

Subclause (4) provides that in proposed subsection (3), *notifiable matter*, in relation to a licence holder, means any of the following:

- (a) a charge of the commission of an offence under this Act being made against the licence holder;
- (b) a charge of the commission of an indictable offence being made against the licence holder;
- (c) a change in the name or address of the licence holder;
- (d) another self-employed prostitute ceasing to conduct a prostitution business in the same place as that of the licence holder;
- (e) another self-employed prostitute starting to conduct a prostitution business in the same place as that of the licence holder.

Subclause (5) provides that a person who holds a manager's licence or a prostitute's licence (general) must give the CEO notice in writing of any notifiable matter as defined in subsection (6) within 7 days after becoming aware of the matter. The penalty for contravening this proposed sub-clause is a fine of \$24 000.

Subclause (6) provide that in subsection (5) *notifiable matter*, in relation to a licence holder, means any of the following:

- (a) a charge of the commission of an offence under this Act being made against the licence holder;
- (b) a charge of the commission of an indictable offence being made against the licence holder;
- (c) a change in the name or address of the licence holder.

Division 6 – Suspension or revocation of licence

Clause 72 Powers of CEO

This clause provides the CEO of the licensing authority with power to obtain information and provides for how the CEO is to deal with that information.

Subclause (1) provides that the CEO may for the purposes of determining whether or not a licence should be suspended or revoked do any of the following:

- (a) require a person to produce any document or other thing concerning the determination that is in the possession or under the control of the person;
- (b) inspect any document or other thing produced to the CEO and retain it for such reasonable period as the CEO thinks fit, and make copies of a document or any of its contents;
- (c) require a person to either, under subparagraph (i) give such information as required; or, under subparagraph (ii), answer any question put to the person in relation to the determination.

Subclause (2) provides the things that are required in relation to a requirement that a person produce any document or other thing under proposed subparagraph (1)(a). The requirement:

- (a) must be made by notice in writing given to the person required to produce the document or other thing;
- (b) must specify the time at or within which the document or other thing must be produced;
- (c) may, by its terms, require that the document or other thing required be produced at a place and by means specified in the requirement; and
- (d) where the document required is not in a readable format, must be treated as a requirement to produce:
 - (i) the document itself; and
 - (ii) the contents of the document in a readable format.

Subclause (3) provides the things that are required in relation to a requirement made under subsection (1)(c), which requires a person to give the CEO information as required and to answer any question put to that person in relation to the determination. This includes that the requirement:

- (a) may be made orally or by notice in writing served on the person required to give information or answer a question, as the case may be;
- (b) must specify the time at or within which the information must be given or the question must be answered, as the case may be; and
- (c) may, by its terms, require that the information or answer required —
 - (i) be given orally or in writing; or
 - (ii) be given at or sent or delivered to a place specified in the requirement; or
 - (iii) in the case of written information or answers be sent or delivered by means specified in the requirement; or
 - (iv) be verified by statutory declaration.

Subclause (4) provides that if under proposed subsection (1)(a) the CEO requires a person to produce any document or other thing concerning the determination that is in the possession or under the control of the person, the CEO must inform that person that the person is required under this Act to produce the document or thing.

Subclause (5) provides that if under proposed subsection (1)(c) the CEO requires a person to give information or answer a question, the CEO must inform that person that the person is required under this Act to give the information or answer the question.

Clause 73 Suspension or revocation of a licence

This clause provides the CEO with the power to suspend or revoke a licence.

Subclause (1) provides that the CEO must not suspend or revoke a licence unless the CEO has first informed the licence holder that he or she is considering suspending or revoking the licence. The CEO is to give the licence holder a reasonable opportunity to be heard or make written representations.

Subclause (2) provides that the CEO may by notice given to a licence holder suspend the licence for a period specified in the notice or revoke the licence if any of the following matters apply:

- (a) the CEO is no longer satisfied as to any matter about which the CEO would be required to be satisfied before issuing or renewing the licence;
- (b) the CEO is satisfied that the licence holder has breached a provision of this Act, whether or not a prosecution has commenced;
- (c) in the case where the licence holder is a company, the CEO is satisfied that an officer of the company has breached a provision of this Act, whether or not a prosecution has commenced;
- (d) in the case of an operator's licence, the CEO is satisfied that an operator of the prostitution business, the manager of the business or a prostitute working for the business has failed to comply with the approved health and drug management plan for the business;
- (e) in the case of a manager's licence, the CEO is satisfied that the manager, or an operator of a prostitution business or a prostitute working for a prostitution business, when being managed by the licence holder, has failed to comply with the approved health and drug management plan for the business;
- (f) in the case of a prostitute's licence (general), the CEO is satisfied that the licence holder has failed to comply with the approved health and drug management plan for a prostitution business for which the licence holder works or has worked;
- (g) in the case of a prostitute's licence (self-employed), the CEO is satisfied that the licence holder has failed to comply with the approved health and drug management plan for the licence holder's prostitution business; or
- (h) the CEO comes to know of any other matter that would prevent the CEO from issuing the licence if an application were only then being made for it.

Subclause (3) provides that in proposed subsection (2)(d), (e) and (f), ***approved health and drug management plan*** means the health and drug management plan that accompanied the application for the issue or most recent renewal, as is relevant in the case, of the operator's licence for the prostitution business and that satisfied the CEO as being appropriate.

Subclause (4) provides that in subsection (2)(g), *approved health and drug management plan* means the health and drug management plan that accompanied the application for the issue or most recent renewal, as is relevant in the case, of the prostitute's licence (self-employed) and that satisfied the CEO as being appropriate.

Subclause (5) provides that the suspension or revocation of a licence takes effect when written notice of it, including the reasons for the decision to suspend or revoke the licence, and notice of the person's right of review under proposed section 153(1), has been given to the person.

Subclause (6) provides that nothing in proposed subsection (5) requires or authorises the CEO to disclose confidential police information.

Subclause (7) provides that a licence is of no effect while it is suspended.

Clause 74 Notification of revoked licences

This clause ensures that the person who has a licence revoked is notified of the fact that the licence has been revoked or a CEO's decision has been set aside.

Subparagraph (a) provides that the CEO may notify any person who holds an operator's licence:

- (i) that a person has had a licence revoked; and
- (ii) the day on which the revocation took effect;

Subparagraph (b) provides that the CEO must give to a person notified under paragraph (a) information about any setting aside of the CEO's decision to revoke the licence by the State Administrative Tribunal.

Clause 75 Person whose licence revoked not to work for prostitution business for 5 years

This clause ensures that a person who has had a licence revoked does not work in a prostitution business in this State for 5 years following the revocation of that licence in any capacity. They will not be able to work as an operator, manager or prostitute or in any other capacity such as a cleaner, receptionist, security officer etc in a prostitution business. This will prevent a person who has been deemed not to be suitable to hold a licence under the Act from continuing to have any contact with the industry where they can influence the activities in some way.

Subclause (1) provides that an operator of a prostitution business who, under proposed section 74, is notified that a person's licence has been revoked must ensure that the person does not work for the prostitution business, in any capacity, during the period of 5 years starting on the day on which the revocation took effect. The penalty for contravening this subsection is a fine of \$10 000.

Subclause (2) provides that a person who has had a licence revoked must not work for any prostitution business, in any capacity, during the period of 5 years starting on the day on which the revocation took effect. The penalty for contravening this subsection is a fine of \$10 000.

Division 7 – Offences relating to licences

Clause 76 False or misleading information

This clause provides a penalty for providing false or misleading information if the CEO requests additional information that is relevant to making a decision on an application for the issue or renewal of a licence under the Act.

Subclause (1) provides that a person must not do any of the things set out in subsection (2).

Subparagraph (a) provides that person must not do any of the things set out in subsection (2) in relation to an application under this Part;

Subparagraph (b) provides that person must not do any of the things set out in subsection (2) in relation to the compliance, or purported compliance, with a requirement under section 53(1) to give the CEO a document or information. The penalty for contravening this proposed subclause will be a fine of \$24,000 or imprisonment for 2 years.

Subclause (2) provides that the following are the things to which proposed subsection (1) applies:

- (a) making a statement which the person knows is false or misleading in a material particular;
- (b) making a statement which is false or misleading in a material particular, with reckless disregard as to whether or not the statement is false or misleading in a material particular;
- (c) providing, or causing to be provided, information that the person knows is false or misleading in a material particular; or
- (d) providing, or causing to be provided, information that is false or misleading in a material particular, with reckless disregard as to whether the information is false or misleading in a material particular.

Clause 77 Offences in relation to determination under section 72

This clause provides a penalty for a person who is required to give any information under the powers provided to the CEO in proposed section 72 if that person fails to provide that information.

Subclause (1) provides that where a person is required to give any information, answer any question, or produce any document or thing under proposed section 72, that person must not, without reasonable excuse (proof of which lies on the person) do any of the following:

- (a) fail to give that information or answer that question at or within the time specified in the requirement;
- (b) give any information or answer that is false in any particular;
- (c) fail to produce that document or thing at or within the time specified in the requirement.

The penalty for contravening this subclause is a fine of \$24 000 or imprisonment for 2 years.

Subclause (2) provides that it is a defence to a charge of an offence under subsection (1)(a) or (c) if the accused can prove any of the following:

- (a) that, in the case of an alleged offence arising out of a requirement made orally under section 72, the CEO did not, when making the requirement, inform the accused that he or she was required under this Act to give the information or answer the question, as the case may be;
- (b) that, in the case of an alleged offence arising out of a requirement made by notice in writing under section 72, the notice did not state that he or she was required under this Act to give the information, answer the question, or produce the document or thing, as the case may be;
- (c) that the time specified in the requirement did not afford the accused sufficient notice to enable him or her to comply with the requirement;
- (d) that, in any case, the CEO did not, before making the requirement, have reasonable grounds to believe that compliance with the requirement would assist the CEO in making the determination.

Clause 78 Incrimination information, questions or documents

This clause gives details of the things that a person will not be excused from compliance with a request for information from the CEO under the powers provided in proposed section 72.

Clause 78 provides that an individual is not excused from complying with a requirement under proposed section 72, which relates to the powers of the CEO to request information, on the ground that the answer to a question or the production of a document or other thing might incriminate the individual or render the individual liable to a penalty. Neither of the following is admissible in evidence in any civil or criminal proceedings against the individual other than proceedings for an offence under section 77(1)(b):

- (a) an answer given by the individual that was given to comply with the requirement; nor
- (b) the fact that a document or other thing produced by the individual to comply with the requirement was produced,

Division 8 – Planning and development controls

This clause provides the planning and development controls in relation to prostitution businesses. The provisions enact the Government policy which is that prostitution businesses will not be permitted to spread throughout the suburbs and towns of Western Australia but will be contained to a small number of designated areas where a regulated system will be tolerated.

Clause 79 Terms used

This clause provides definitions of certain terms used in Division 8.

caretaker's dwelling means a dwelling that is:

- (a) on the same land as, or part of, a building, operation or plant; and
- (b) occupied by a supervisor of the building, operation or plant.

City of Perth inner zone means the area of land in the Perth local government district that is bounded by the Mitchell Freeway to the west, Newcastle Street to the north, Victoria Avenue and Lord Street to the east and the Swan River to the south, but does not include the area of land that is bounded by Fitzgerald Street, Aberdeen Street, Shenton Street and James Street.

planning scheme means any of the following:

- (a) a planning scheme as defined in the *Planning and Development Act 2005* section 4(1);
- (b) a prescribed redevelopment scheme;
- (c) a master plan as defined in the *Hope Valley-Wattleup Redevelopment Act 2000* section 3(1);
- (d) an interim development order as defined in the *Planning and Development Act 2005* section 4(1).

protected place means:

- (a) a hospital; or
- (b) a place used for education, worship, the care or recreation of children, or to provide community support or welfare; or
- (c) a place of a kind that is prescribed; or
- (d) a place that is used for a prescribed purpose.

residential area means an area, zone or precinct, however described, in which the use of land for residential purposes is permitted by the applicable planning scheme, whether or not subject to conditions, without the need for the responsible planning authority to exercise its discretion to grant planning approval for such use;

responsible planning authority, in relation to:

- (a) a local planning scheme as defined in the *Planning and Development Act 2005* section 4(1), means the local government which is responsible for the local planning scheme; or
- (b) an improvement scheme as defined in the *Planning and Development Act 2005* section 4(1), means the WAPC; or
- (c) a region planning scheme as defined in the *Planning and Development Act 2005* section 4(1), means the WAPC; or
- (d) a prescribed redevelopment scheme, means the authority prescribed in relation to that scheme for the purposes of this definition; or
- (e) a master plan as defined in the *Hope Valley-Wattleup Redevelopment Act 2000* section 3(1), means the Western Australian Land Authority established under the *Western Australian Land Authority Act 1992* section 5(1); or
- (f) a local interim development order as defined in the *Planning and Development Act 2005* section 4(1), means the local government responsible for the enforcement of the order; or
- (g) a regional interim development order as defined in the *Planning and Development Act 2005* section 4(1), means the WAPC or local government exercising the powers of the WAPC.

WAPC means the Western Australian Planning Commission established by the *Planning and Development Act 2005* section 7.

Clause 80 Measurement of distances

Where a prostitution business is permitted under the Act to operate, it is not permitted to be within a certain distance from a residence or a protected place. This clause provides details of how the measurements of those distances are to be made.

This clause provides that for the purposes of this Division the distance between a protected place or a residence and a prostitution business must be measured between:

- (a) the boundary of the land on which the protected place or residence is built that is closest to the prostitution business; and
- (b) the wall of the building in which the prostitution business is conducted or proposed to be conducted that is closest to the protected place or residence.

Clause 81 This Division does not affect licensing requirements

This clause provides that nothing in this Division affects a requirement under Division 2 for a person to hold a licence in relation to a prostitution business.

This means that even if a person has obtained approval from a responsible planning authority to use land for a prostitution business, they will still be required to seek an operator's licence from the licensing authority which is not issued just because the person has approval from the responsible planning authority and may not be issued if the person is found to be unsuitable to hold an operator's licence.

Clause 82 This Division overrides planning schemes, approvals

This clause provides that the provision in Division 8 of Part 6 of the Act will override any provision in any planning schemes in this State. This means that a local authority cannot circumvent the provisions in this Division.

Subclause (1) provides that the provisions of this Division apply despite the provisions of any planning scheme.

Subclause (2) provides that a provision in a planning scheme that is inconsistent with a provision of this Division is of no effect to the extent of the inconsistency.

Subclause (3) provides that for the purposes of section 55(7)(b), 58(2)(d) or 61(3)(a), a responsible planning authority's approval for a prostitution business to be conducted in a place has no effect to the extent that the approval is inconsistent with a provision of this Division.

Clause 83 No prostitution businesses in residential areas

This clause confirms the Government policy not to allow prostitution businesses to spread throughout the suburbs and towns of Western Australia and to have a small number of designated areas where a regulated system will be tolerated. No form of prostitution business will be permitted in areas zoned residential or mixed residential.

Subclause (1) provides that land in a residential area must not be used for the purposes of a prostitution business.

Subclause (2) provides that despite subsection (1), land in a residential area may continue to be used for the purposes of a prostitution business if all of the following applies:

- (a) if it did not become part of a residential area until after an operator's licence in relation to the business was issued; and
- (b) for the duration of the operator's licence or, if the licence has been renewed, for the duration of the most recent renewal.

This allows for situations where a prostitution business has commenced operating in an area and subsequently the land use is changed by a responsible planning authority. Once the licence has expired, the fact that the area is now zoned residential will mean that the licence cannot be renewed for that location.

Clause 84 Prostitution businesses in non-residential areas

This clause confirms the areas where land use for a prostitution business may be approved by the responsible planning authority if certain things apply, which are set out in subclause (1).

Subclause (1) provides that land that is not in a residential area may be used for the purposes of a prostitution business if all of the following apply:

- (a) a development application is made for approval to use the land for that purpose; and
- (b) the responsible planning authority's decision on the application permits the land to be used for that purpose; and
- (c) the land is not land to which section 85(2)(a), (b) or (c) applies or if it is, the use is in accordance with section 85(3); and
- (d) the land is not land to which section 86(2)(a), (b) or (c) applies or if it is, the use is in accordance with section 86(3).

Subclause (2) provides that a planning scheme may require that a development application that is made for approval to use land for the purposes of a prostitution business must be advertised in accordance with the provisions of the *Planning and Development Act 2005*, including regulations made under that Act, relating to the advertisement of development applications.

Clause 85 Prostitution businesses in non-residential areas in City of Perth inner zone

Special provisions have been developed for the City of Perth in recognition that the City has adopted a mix of residential and commercial use across a large area of its jurisdiction that are situated in close proximity. However, prostitution businesses will still have restrictions in relation to the proximity to protected places and residences, or if the City of Perth considers that there are a significant number of dwellings in an area that is not a residential area.

The proposed clause also provides that a prostitution business that was established after this Division comes into operation can continue to operate if, after the issue of an operator's licence, a protected place is situated less than 100 m from the business, or if a dwelling is established in the building in which the business is conducted, or if the City of Perth forms the opinion that the area is located in a location where there is a significant number of dwellings. In these situations, it will be the responsibility of the City of Perth to inform the applicants for the proposed new developments of each prostitution business that already exists.

Subclause (1) provides that in this section *land (CPIZ)* means land that:

- (a) is within the City of Perth inner zone; and
- (b) is not in a residential area.

Subclause (2) provides that land (CPIZ) must not be used for the purposes of a prostitution business if any of the following applies:

- (a) the distance between the prostitution business and any protected place, wherever situated, is less than 100 m;
- (b) the land comprises a building that contains a dwelling other than a caretaker's dwelling; or
- (c) in the opinion of the City of Perth, the land is in an area that contains a significant number of dwellings (although not a residential area).

Subclause (3) provides that despite subsection (2), land (CPIZ) may continue to be used for the purposes of a prostitution business if all of the following applies:

- (a) the business was established after this Division came into operation; and
- (b) after the issue of an operator's licence in relation to the business the following applies:
 - (i) a protected place is situated less than 100 m from the business; or
 - (ii) a dwelling, other than a caretaker's dwelling, is established in the building in which the business is conducted; or
 - (iii) the City of Perth forms the opinion that the area in which the business is located contains a significant number of dwellings (although not a residential area);and
- (c) if a development application was made for approval to use land in a way mentioned in paragraph (b), the responsible planning authority to which the application was made had, before making a decision on the application, informed the applicant of each prostitution business to which paragraph (b) would apply if the use was permitted.

Clause 86 Prostitution businesses in non-residential areas in rest of State

This clause applies to all areas of the State other than the City of Perth.

This clause provides for restrictions in relation to the proximity of prostitution businesses to protected places and residences, or if a responsible planning authority considers that there are a significant number of dwellings in an area that is not a residential area.

The proposed clause also provides that a prostitution business that was established after this Division comes into operation can continue to operate if, after the issue of an operator's licence, a protected place is situated less than 100 m for the business, or 200 m from a dwelling, or if the responsible planning authority forms the opinion that the area is located in a location where there is a significant number of dwellings. In these situations, it will be the responsibility of the responsible planning authority to inform the applicants for the proposed new developments of each prostitution business that already exists.

Subclause (1) provides that in this section *land (rest of WA)* means land that:

- (a) is within any area of the State other than the City of Perth inner zone;
and
- (b) is not in a residential area.

Subclause (2) provides that land (rest of WA) must not be used for the purposes of a prostitution business if any of the following applies:

- (1) the distance between the prostitution business and any residence (other than a caretaker's dwelling), wherever situated, is less than 100 m; or
- (2) the distance between the prostitution business and any protected place, wherever situated, is less than 200 m; or
- (3) in the opinion of the responsible planning authority for the land in which the business is located, the land is in an area that contains a significant number of dwellings (although not a residential area).

Subclause (3) provides that despite subsection (2), land (rest of WA) may continue to be used for the purposes of a prostitution business if all of the following applies:

- (a) the business was established after this Division came into operation;
and
 - (b) after the issue of an operator's licence in relation to the business:
 - (i) a residence, other than a caretaker's dwelling, is situated less than 100 m from the business; or
 - (ii) a protected place is situated less than 200 m from the business; or
 - (iii) the responsible planning authority for the land in which the business is located forms the opinion that the area in which the business is located contains a significant number of dwellings (although not a residential area);
- and

- (c) if a development application was made for approval to use land in a way mentioned in paragraph (b), the responsible planning authority to which the application was made had, before making a decision on the application, informed the applicant of each prostitution business to which paragraph (b) would apply if the use was permitted.

Division 9 – Governor’s powers as to licences in certain areas and licence applications

In addition to the restrictions imposed by the planning and development controls in the Bill, the Government also has the ability to refer matters to the Governor, recommending that an order be made preventing a licence being issued to any person to operate or manage a prostitution business in a specified area of the State.

Clause 87 Terms used

Clause 87 provides the definition of certain terms used in this Division.

no licence area order means an order made under section 88(1).

order means a no licence area order or a particular applicant order

particular applicant order means an order made under section 89(1).

Clause 88 No licence area order

This clause enables the Governor to make an order to prevent the CEO from issuing a licence to operate or manage any prostitution business in a particular area.

Subclause (1) provides that the Governor may, for any reason, make an order that the CEO must not issue a licence to any person to operate or manage a prostitution business in an area of the State that is specified in the order. This provides a mechanism in addition to the planning provisions to control where prostitution businesses are situated and how many are established in the State.

Subclause (2) provides that the Governor may, for any reason, vary or revoke a no licence area order.

Subclause (3) provides that before a no licence area order is made, varied or revoked the Minister must, at least 14 days before the day on which the order is proposed to be made, varied or revoked do certain things, set out in subparagraphs (a) and (b) to ensure the community is aware of the action to be taken so that affected person may make a submission to the Minister if they have any concerns regarding the proposed action.

Subparagraph (a) provides that the Minister must publish in the *Gazette* notice of the intention to make, vary or revoke the order so that persons likely to be affected by the making, variation or revocation of the order may make representations in writing to the Minister.

Subparagraph (b) provides that the Minister must inform the local government authority of the district in which the area is located of the intention to make, vary or revoke the order so that the local government authority may make representations in writing to the Minister. This ensures that the local government authority is aware of the status of the order which will have an impact of planning decisions they make in relation to prostitution business.

Subclause (4) provides that before a no licence area order is made, varied or revoked the Minister must have regard to each matter raised in the representations received in deciding whether to recommend that the Governor makes, varies or revokes a no licence area order.

Subclause (5) provides that a no licence area order, or a variation or revocation of a no licence area order, takes effect on the day on which it is published in the *Gazette*.

Clause 89 Particular applicant order

This clause enables the Governor to make an order to prevent the CEO from issuing a licence to a particular person who is deemed to be not suitable to be involved in the prostitution industry.

Subclause (1) provides that the Governor may for any reason, after an application for a licence is made but before the licence is issued, make an order that the CEO must not issue the licence.

Subclause (2) provides that the Governor may vary or revoke a particular applicant order for any reason.

Subclause (3) provides that before a particular applicant order is made or varied the Minister must give notice of the intention to make or vary the order to the applicant so that the applicant may make representations in writing to the Minister. The notice is to be given at least 14 days before the day the order is proposed to be made or varied.

Subclause (4) provides that before a particular applicant order is made or varied the Minister must have regard to each matter raised in the representations received before deciding whether to recommend that the Governor makes or varies a particular applicant order.

Subclause (5) provides that a particular applicant order, or a variation or revocation of a particular applicant order, takes effect on the day on which the order or advice of the variation or revocation is given to the CEO.

Subclause (6) provides that a copy of a particular applicant order or advice of an order's variation or revocation must be given to the applicant before the expiry of the period of 7 days after the order or advice is given to the CEO. Failure to do this does not affect the effect of the order, variation or revocation.

Clause 90 Effect of orders

This clause gives detail of the effect of orders made under this Division.

Subclause (1) provides that no licence area order has effect even if the following apply:

- (a) land that is in the area of the State that is the subject of the order may be used for the purposes of a prostitution business under Division 8,; and
- (b) the responsible planning authority:
 - (i) has given, in accordance with Division 8, its approval for a prostitution business to be conducted in a place in the area; or
 - (ii) would have given, in accordance with Division 8, its approval for a prostitution business to be conducted in a place in the area, but for the order.

Subclause (2) provides that a planning scheme, as defined in section 79, that applies to land that is in the area of the State that is the subject of a no licence area order is not to permit the use of the land for a prostitution business while the order is in effect.

Subclause (3) provides that a particular applicant order has effect according to its tenor even if the CEO would have issued a licence to the applicant under section 55(2) if the order had not been in place.

Clause 91 Orders not open to disallowance, challenge

This clause provides that orders made under this provision may not be challenged or appealed against on any grounds.

Subclause (1) provides that an order is not subsidiary legislation for the purposes of the *Interpretation Act 1984*.

Subclause (2) provides that an order made or purportedly made may not be challenged, appealed against, reviewed, quashed or called into question on any grounds whatsoever before any court, tribunal, body or person in any legal proceedings, or restrained, removed or otherwise affected by proceedings for any injunctive, declaratory or other relief, remedy or order whether by way of prerogative writ or otherwise.

Subclause (3) provides that subsection (2) does not limit judicial review for jurisdictional error.

Part 7 – Enforcement

Division 1 – Preliminary

Clause 92 Term used: authorised person

This clause provides that the term *authorised person* used in this part of the proposed Act means a person designated under proposed section 97(1) as an authorised person.

Clause 93 Reasonable force

This clause provides that a police officer may use any force that is reasonably necessary or may call on any assistance she or he may consider necessary in order to exercise a power under this Part of the proposed Act.

Clause 94 Hindering performance of functions

This clause is similar to section 11 in the *Prostitution Act 2000*.

This clause provides an offence if a person delays, obstructs or otherwise hinders a police officer or any other person in the performance of any function that the police officer or other person has under the proposed Act. The penalty will be imprisonment for 2 years.

Division 2 – Information and reports

Clause 95 Confidential police information

Subclause (1) provides that the Commissioner may classify any information or document held by the Commissioner as confidential for the purposes of this proposed section. This aims to ensure police operations are not compromised by the disclosure of certain information.

Subclause (2) provides that the CEO must not publish or disclose any confidential information that is provided by the Commissioner for the purposes of the proposed Act.

Subclause (3) provides that proposed subsection (2) applies despite any other provision in the proposed Act but does not apply to prevent the CEO from disclosing confidential police information to a court or the State Administrative Tribunal or a person whom the Commissioner authorised the disclosure of the information.

Subclause (4) provides details of the things about which the CEO makes a decision based on, or partly based on, confidential police information where the CEO is not required to give any reasons for the decision other than that the decision is made in the public interest. The things about which the CEO makes a decision includes any of the following:

- (a) a decision to refuse to issue or renew a licence;
- (b) a decision to impose, vary or revoke a licence condition;
- (c) a decision to suspend or revoke a licence;
- (d) a decision to make a prohibition order under proposed section 120 or an order varying or revoking a prohibition order;
- (e) a decision to refuse to give approval under proposed section 180 or about the imposition of a condition on an approval.

Subclause (5) provides details of the way any confidential police information is to be dealt with in any proceedings in a court or the State Administrative Tribunal under the proposed Act (other than proceedings for an offence). This includes, under sub paragraph (a),

- (a) that on the application of the Commissioner, all reasonable steps must be taken to maintain the confidentiality of the confidential police information including, under sub subparagraph (i) steps to receive evidence and hear argument about the information in private and in the absence of any party to the proceedings, other than the CEO or the Commissioner or their representatives; and, under sub subparagraph (ii) steps to prohibit the publication of evidence about the confidential police information; and, under subparagraph (b);
- (b) a court or the State Administrative Tribunal may take evidence consisting of or relating to confidential police information by way of an affidavit of a member of the Police Force of or above the rank of Superintendent.

Clause 96 Commissioners reports, opinions on licensing matters

This clause provides that in addition to providing reports to the CEO under proposed section 54(3), the Commissioner may provide the CEO with information and give an opinion about the following matters at any time:

- (a) whether a licence holder continues to be eligible or suitable to hold the licence;
- (b) the imposition, variation or revocation of licence conditions;
- (c) the suspension or revocation of a licence.

Division 3 – Authorised persons

Clause 97 Authorised persons

Subclause (1) provides that the CEO may designate a public service officer employed in the Department as an authorised person for the purposes of the proposed Act. This can be by way of instrument or in writing.

Subclause (2) provides that a person may be designated to be an authorised person for a fixed period or an indefinite period.

Subclause (3) provides that the CEO may revoke a designation at any time and this can be by way of instrument or in writing.

Clause 98 Identity cards

Subclause (1) provides that the CEO must give an identity card to each person designated by the CEO as an authorised person.

Subclause (2) provides that the identity card must identify the person as an authorised person; and contain a recent photograph of that person.

Subclause (3) provides that the person must return their identify card to the CEO within 14 days of ceasing to be an authorised person. The penalty for contravening the proposed subclause is a fine of \$5,000.

Subclause (4) provides that proposed subclause (3) does not apply if the person has a reasonable excuse.

Subclause (5) provides that an authorised person must carry his or her identity card at all times when exercising powers or performing functions as an authorised person.

Clause 99 Production or display of identity card

Subclause (1) provides the circumstances that an authorised person may exercise a power in relation to someone. This includes:

- (a) that the authorised person first produces their identity card for the other person's inspection; or
- (b) that the authorised person has the identity card displayed so that it is clearly visible to the other person.

Subclause (2) provides that if it is not practicable to comply with proposed subsection (1) before exercising the power, the authorised person may exercise the power and then produce the identity card for inspection by the person at the first reasonable opportunity.

Clause 100 Limitation on powers of authorised person

Subclause (1) provides that an authorised person must act in accordance with the CEO's directions and subject to any limitations on the powers of that person mentioned in proposed subsection (2).

Subclause (2) provides the circumstances the powers of an authorised person may be limited by. These include:

- (a) under a condition that is specified in the person's instrument of designation as an authorised person; or
- (b) by a written notice given by the CEO to the person.

Subclause (3) provides that the CEO may at any time revoke or vary a condition of designation mentioned in proposed subsection (2)(a) or a notice mentioned in proposed subsection (2)(b).

Division 4 – Enforcement powers

Clause 101 Terms used

Subclause (1) provides definitions for significant terms used in the proposed Division.

compliance purposes in the proposed Division means one or more of the following:

- (a) monitoring whether a provision of this Act has been, or is being, complied with;
- (b) investigating a suspected contravention of a provision of this Act.

juvenile justice team means a juvenile justice team under the *Young Offenders Act 1994* Part 5 Division 2.

Subsection (2) provides that for the purposes of the proposed Division a person is lawfully entitled to possess something in the following circumstances:

- (a) if the person owns it or is authorised by the owner to possess it; and
- (b) if the possession is not prohibited by law or is authorised, justified or excused by law.

Clause 102 Police officer, authorised person, may enter place for certain purposes

Subclause (1) provides that for compliance purposes a police officer may enter a place at any time without a warrant if the officer reasonably suspects the following:

- (a) that the place is not a dwelling; and
- (b) a prostitution business is being conducted from the place.

Under this provision a police officer without a warrant will only be permitted to enter a place suspected of being conducted as a prostitution business if that place is not a dwelling.

Subclause (2) provides that without a warrant and at any time, an authorised person may enter a place from which a prostitution business is conducted that is subject to a licence to ascertain any of the following things:

- (a) that each person operating the prostitution business holds a current operator's licence or a current prostitute's licence (self-employed) if the prostitution business is run by a self-employed prostitute;

- (b) that the person that is managing the prostitution business at the time the authorised person enters the place holds a current manager's licence and is present at the place of the prostitution business;
- (c) that any person who acts as a prostitute or is available to act as a prostitute in the prostitution business holds a current prostitute's licence or has complied with proposed section 22(b), which relates to the operator of the business being satisfied of the prostitute's identity, age and residential status;
- (d) each of section 18(1), (2) or (4), which relates to display of licences, as is relevant to the case is being complied with.

Subclause (3) provides that a police officer or an authorised person who enters a place under subsection (1) or (2) may require a person at the place who is apparently operating, managing or working for the prostitution business to give them his or her name and address and provide proof of their identity.

Subclause (4) provides that a police officer who enters a place under proposed subsection (1) may do any of the following:

- (a) search the place and inspect any articles and records kept at that place;
- (b) stop, detain and search anyone at the place;
- (c) seize anything that the police officer suspects on reasonable grounds will afford evidence as to the commission of an offence.

Clause 103 Obstructing person exercising power under s.102

Subclause (1) provides that a person must not prevent or attempt to prevent the following things:

- (a) a police officer from entering a place under proposed section 102(1);
- (b) an authorised person from entering a place under proposed section 102(2);
- (c) obstruct or impede a police officer or authorised person in the exercise of his or her powers under proposed section 102

The penalty for contravening subclause (1) is a fine of \$24,000 or imprisonment for 2 years.

Subclause (2) provides that if a person is required to give the police officer or authorised person his or her name and address or provide proof of his or her identity under proposed section 102(3) that person must not fail to give that information. The penalty for failing to give the required information is a fine of \$24,000 or imprisonment for 2 years.

Clause 104 Powers to obtain information

This clause is similar to section 23 in the *Prostitution Act 2000*.

Subclause (1) provides the powers a police has for compliance purposes, which are:

- (a) that a police officer may require a person to produce any document or other thing that is in the possession or under the control of that person;
- (b) that a police officer may inspect any document or other thing produced to the police officer and may retain it for a reasonable period and make copies of the document or any of its contents;
- (c) that a police officer may require, under proposed sub subparagraph (i), a person to give to the police officer such information as the police officer requires; and under proposed sub subparagraph (ii), to answer any question the police officer puts to the person.

Subclause (2) provides the way in which information required under proposed subsection (1) is to be produced.

Subparagraph (a) provides that the requirement to produce a document or other thing must be made in writing and given to the person.

Subparagraph (b) provides that the requirement to produce a document or other thing must specify the time at or within which the document or other thing must be produced.

Subparagraph (c) provides that the requirement to produce a document or other thing may be required to be produced at a place by means that will be specified in the requirement.

Subparagraph (d) provides that where a document that is required is not in a readable format under proposed sub subparagraph (i) the document itself must be produced; and under proposed sub subparagraph (ii) the contents of the document must be produced in a readable format.

Subclause (3) provides for the means by which information or an answer to a question that is required under proposed subsection (1) is made.

Subparagraph (a) provides that the requirement to give information or answer to a question may be made orally or in writing served on the person required to give the information or answer the question.

Subparagraph (b) provides that the requirement to give information or answer to a question must specify the time at or within which the information must be given or the question must be answered.

Subparagraph (c) provides the terms that may be required in relation to the information or answer, which are that it:

- (i) be given orally or in writing; or
- (ii) be given at a place, or sent or delivered to a place specified in the requirement; or
- (iii) be sent or delivered by means specified in the requirement, in the case of written information or answers; or
- (iv) be verified by statutory declaration.

Subclause (4) provides that the police officer must inform the person that he or she is required under the Act to give the information or to answer the question if required to do so under proposed subsection (1).

Clause 105 Failure to comply with requirements under s.104

This clause is similar to subsections 13(1),(2),(3) and (4) in the *Prostitution Act 2000*.

This clause ensures that the purposes of the Act cannot be frustrated by people failing to comply with requirements.

Subclause (1) provides that unless a person has a lawful excuse, a person must not refuse or fail to produce a document or other thing as required under proposed section 104. The penalty for contravening this subclause is imprisonment for 2 years.

Subclause (2) provides that unless a person has a lawful excuse, a person must not refuse or fail to answer a question or otherwise give information when required to do so under proposed section 104. The penalty for contravening this subclause is imprisonment for 2 years.

Subclause (3) provides that where an individual is required under proposed section 104 to answer a question or give information or produce anything, certain things will not be admissible in evidence in any civil or criminal proceedings against the individual other than proceedings for perjury or for an offence arising from the false or misleading nature of the answer or the information that is given. The things that will not be admissible in evidence are:

- (a) an answer given by the individual that was given to comply with the requirement;
- (b) the fact that any information that was given by the individual to comply with the requirement was given;
- (c) the fact that anything that was produced by the individual to comply with the requirement was produced.

This subclause provides that self incrimination is not a valid excuse for refusing or failing to comply.

Subclause (4) provides that nothing in the Act prevents certain things. It removes legal professional privilege as an excuse.

Under subparagraph (a) nothing in the Act prevents an individual from refusing to answer a question or give information or produce a document or other thing because these things contain information that might incriminate the individual or render him or her liable to a penalty.

Under subparagraph (b) nothing in the Act prevents a person refusing to answer a question or give information, a document or other thing because these things contain information in respect of which the person claims legal professional privilege.

Subclause (5) provides that a document or thing that is produced in compliance with a requirement under proposed section 104; and for which a person entitled to possession of it claims legal professional privilege for all or some other information in it must be dealt with in accordance with *Criminal Investigation Act 2006* section 151 as if it were a business record produced under an order to produce issued under section 53 of that Act.

Clause 106 Police direction to move on

Subclause (1) is similar to section 24 in the *Prostitution Act 2000*.

This clause gives police the power to move a person away from a public place where they may have sought or intend to seek a prostitute or a client in a public place.

Subclause (1) provides that a police officer who suspects that a person has committed or intends to commit an offence under proposed sections 9 and 10 in relation to a public place may direct the person to move away from that place and the surrounding area and stay away for a period of not more than 24 hours. The direction will be in writing in a form approved by the Commissioner and will state the place and surrounding area the person has to stay away from and the period of time they are to stay away from that place.

Subclause (2) provides that unless a person has a lawful excuse, a person must not contravene a direction given under proposed subclause (1). The penalty for contravening the direction given in subclause (1) is a fine of \$6,000 for a first offence; and imprisonment for one year for a second and subsequent offence.

Clause 107 Detain, search and seize without warrant

This clause is similar to section 25 in the *Prostitution Act 2000*.

This clause provides police officers with the authority to stop, search, and detain, without warrant anyone that is reasonably suspected of committing an offence under the proposed Act, or carrying anything that will afford evidence as to the commission of an offence under the Act. This reflects the need for police officers to be able to immediately respond to situation where they suspect offences are being committed under the proposed Act.

Subclause (1) provides the meaning of *conveyance* and *offence* the proposed section.

conveyance is to mean anything used or capable of being used to transport people or goods by air, land or water and it does not matter how it is propelled or that it may ordinarily be stationary.

offence means an offence under the Act.

Subclause (2) provides that a police officer may without a warrant stop, detain and search anyone they suspect on reasonable grounds to be committing an offence; or carrying anything that will afford evidence about an offence under the proposed Act.

Subclause (3) provides that a police may without a warrant stop, detain and search any conveyance where they suspect on reasonable grounds there is anyone who is committing an offence; or anything that will afford evidence as to the commission of an offence.

Subclause (4) provides that the power to stop and detain a conveyance includes the power to detain anyone in or on the conveyance for as long as it takes to search the conveyance. This can occur even though the person in or on the conveyance may not be suspected of anything because the person can be detained under proposed subsection (2).

Subclause (5) provides that without a warrant a police officer may seize anything the officer suspects on reasonable grounds will afford evidence as to the commission of an offence.

Clause 108 Detain, search and seize with warrant

This clause is similar to section 27 in the *Prostitution Act 2000*.

The clause is intended to assist police officers in the enforcement of the proposed Act.

Clause (1) provides that if a justice is satisfied there are reasonable grounds for suspecting there is anything that will afford evidence about an offence under the proposed Act a warrant of search and seizure may be granted in relation to that place.

Clause (2) provides that a warrant issued under proposed clause (1) authorises any police officer at any time with assistance and force thought to be necessary to enter the place at any time; search the place; stop, detain and search anyone at the place; and seize anything suspected on reasonable grounds will afford evidence about an offence under the proposed Act.

Clause (3) provides that the Authority given by a warrant lapses 30 days after it was granted. Until it lapses or the purpose for which it was given is satisfied, the authority it gives may be exercised from time to time unless the warrant limits that authority.

Clause 109 Warrant may be obtained remotely

This clause is similar to section 28 in the *Prostitution Act 2000*.

The clause intends to provide for situations where police officers are constrained by time or location.

Subclause (1) provides that an application for a warrant under section 108 may be submitted by telephone, fax, radio or another form of communication if the applicant considers it necessary because of urgent circumstances or because of the applicant's remote location.

Subclause (2) provides that the applicant must prepare a written application setting out the grounds for seeking the warrant and describing the place to which the warrant relates before submitting an application under this proposed section.

Subclause (3) provides that the information in the written application required under proposed subsection (2) must be verified by affidavit. The application may be submitted before the affidavit has been sworn.

Subclause (4) provides for the things that a justice must do when issuing a warrant under this proposed section. This includes that the justice must:

- (a) complete and sign the warrant
- (b) inform the applicant of the terms of the warrant and the date and time of signing;
- (c) record on the warrant the reasons for issuing the warrant; and

(d) send a copy of the warrant to the applicant.

Subclause (5) provides that if a warrant is issued the applicant may complete a form of warrant in the terms indicated by the justice under proposed subparagraph (4)(b) if the applicant writes on it the name of the justice who issued the warrant and the date and time it was signed.

Subclause (6) provides that if the applicant completes a form of warrant in accordance with proposed subsection (5), the applicant must send the completed form of warrant and the affidavit sworn in connection with the warrant to the justice who signed the warrant. This must be done not later than the day following the day on which the warrant ceases to have effect.

Subclause (7) provides that on receiving the documents referred to in proposed subsection (6) the justice must attach them to the warrant signed by the justice. The justice is to deal with the documents as he or she would have dealt with the affidavit if the application for the warrant had not been submitted under this section.

Subclause (8) provides that a form of warrant completed in accordance with proposed subsection (5) must be treated as the warrant itself.

Clause 110 Provisions about searching a person

This clause is similar to subsections 29(1), (2), (3), (4), (5) and (6) in the *Prostitution Act 2000*. The clause provides directions about searching persons under the proposed Act.

Subclause (1) provides the meaning to *medical practitioner* and *registered nurse* used under this proposed section.

medical practitioner means a person who is registered under the *Health Practitioner Regulation National Law (Western Australia)* in the medical profession.

registered nurse means a person who is registered under the *Health Practitioner Regulation National Law Western Australia*) in the nursing and midwifery profession whose name is entered on Division 1 of the Register of Nurses kept under that Law as a registered nurse.

Subclause (2) provides that a police officer cannot conduct a search of a person under this part of the Act unless the police officer is of the same sex as the person searched.

Subclause (3) provides for what is to be done if a police officer of the same sex as the person to be searched is not immediately available. In this situation, another police officer may do either of the following:

- (a) cause the search to be conducted by another person of the same sex as the person to be searched, under the direction of a police officer; or

- (b) detain the person for as long as it reasonably necessary for the person to be searched in accordance with this section; or
- (c) convey or conduct the person to a place where the person can be searched in accordance with this section.

Subclause (4) provides that nothing in this part of the Act authorises a search that is an examination of the body cavities of a person unless it is conducted under subsection (6) by a medical practitioner or a registered nurse and in accordance with subsection (7) if relevant.

Subclause (5) provides that a police officer may arrange for a medical practitioner or registered nurse to examine the body cavities of the person to be searched. Subparagraph (a) provides that the police officer may detain the person until the arrival of that medical practitioner or registered nurse. Subparagraph (b) provides that the police officer may convey or conduct the person to that medical practitioner or registered nurse.

Subclause (6) provides that a medical practitioner or registered nurse may conduct an examination arranged by a police officer under proposed subsection (5) and provides protection for the medical practitioner or registered nurse against any charge for an offence for conducting the examination, if it was reasonably done.

Subclause (7) provides that a strip search or an examination of the body cavities of a child or an incapable person (the *protected person*) must, if practicable, be done in the presence of a responsible person or some other person who can provide the protected person with support and represent their interests.

Subclause (8) provided the definition of certain terms used in subsection (7)

incapable person means a person who, because of intellectual disability, mental illness, brain damage or senility, is incapable of understanding the general nature and effect of, and the reason for and the consequences of undergoing, an examination of the person's body cavities;

responsible person, in relation to a child, has the meaning given to the term in the *Criminal Investigation Act 2006* section 73; i.e. a parent or guardian of the child or another person who has responsibility for the day-to-day care of the child; or if none of these is available a prescribed person, or a person in a prescribed class of persons.

responsible person, in relation to an incapable person, has the meaning given to that term in the *Criminal Investigation Act 2006* section 73; i.e. the spouse or de facto partner of the incapable person, or a parent of the incapable person or a guardian or another person who has responsibility for the day-to-day care of the incapable person; or if none of these is available a prescribed person, or a person in a prescribed class of persons.

strip search means a search that involves any action referred to in the *Criminal Investigation Act 2006* section 64(1) which provides that an officer who is authorised by that Act to do a strip search of a person may remove any article that the person is

wearing including any article covering his or her private parts; search any article removed; search the person's external parts, including his or her private parts; and search the person's mouth but not any other orifice.

Clause 111 Retaining something seized but not forfeited

This clause is similar to section 30 in the *Prostitution Act 2000*. This clause provides police with a means of retaining property that has not been dealt with by a court or another order.

Subclause (1) provides clarity about how this section applies to anything seized under the Act.

Subparagraph (a) provides that this section applies to anything seized under the Act that is not forfeited to the Crown.

Subparagraph (b) provides that this section applies to anything seized under the Act that a court has not ordered to be delivered to a person under proposed sections 112(1)(b) or 113(6).

Subclause (2) provides for the circumstances that apply when a police officer retains anything to which this section applies.

Sub subparagraph (a)(i) provides that a police officer may retain anything to which this section applies if it is required for the investigation of an offence under the Act or the prosecution of someone for an offence under the Act.

Sub subparagraph (a)(ii) provides that a police officer may retain anything to which this section applies if it is required for the purposes of a matter that is being dealt with by a juvenile justice team.

Subparagraph (b) provides that a police officer may retain anything to which this section applies if no person has satisfied the Commissioner that the person is lawfully entitled to possess it.

Subclause (3) provides that anything that has been seized to which this section applies that cannot be retained under subsection (2) must be returned to the person

Clause 112 Forfeiture and delivery on conviction

This clause is similar to section 31 in the *Prostitution Act 2000*.

This clause provides that where a person is convicted of an offence, the court may order that anything seized under the Act is to be forfeited to the Crown, or be delivered to another person who is lawfully entitled to possess it.

Subclause (1) provides that a court that convicts a person of an offence under the Act may order, under subparagraph (a) that anything relating to the offence is forfeited to the Crown regardless of whether or not it has been seized and retained by a police officer under the provisions of the Act. Under subparagraph (b) a court that convicts a

person of an offence under the Act may order anything relating to the offence that has been seized and retained by a police officer to be delivered to another person who is lawfully entitled to possess it.

Subclause (2) provides for situations where a person claims to be lawfully entitled to possess anything in respect of an order made under proposed subsection (1)(b).

Subparagraph (a) provides that the person may be heard in the proceedings for the offence.

Subparagraph (b) provides that the person may make an application under the *Criminal Procedure Act 2004* section 71 as if the person were a party to the prosecution for the offence.

Subparagraph (c) provides that the person may appeal against the order under the *Criminal Appeals Act 2004* Part 2.

Clause 113 Forfeiture and delivery other than on conviction

This clause is similar to section 32 in the *Prostitution Act 2000*. This clause provides a remedy for persons who wish to make application for seized things that are not subject to any court direction.

Subclause (1) provides that if a person claims lawful entitlement to possess a thing seized and retained under the proposed Act, the person may apply to the Magistrates Court for an order that the thing is delivered to the person, unless the application is prevented by proposed subsection (2) and the last day for applying has not passed.

Subclause (2) provides that an application under subsection (1) cannot be made for an order for the delivery of anything under certain circumstances. These are:

- (a) if an order has been made under proposed section 112(1) for its forfeiture or delivery; or
- (b) if a relevant juvenile justice team matter that has commenced has not been finally disposed of by the team; or
- (c) if a relevant charge that has been laid has not been withdrawn or heard or determined.

Subclause (3) provides the meaning of the terms *relevant charge* and *relevant juvenile justice team matter* used in proposed subsection (2). These are:

relevant charge means a charge of an offence to which the thing that was seized relates.

relevant juvenile justice team matter means a matter to which the thing that was seized relates that is or was being dealt with by a juvenile justice team.

Subclause (4) provides that the last day for applying for an order under proposed subsection (1) is the 21st day after the day that the thing was seized unless the last day for applying is postponed by proposed subsection (5).

Subclause (5) provides that for any part of the time when an application could be made under proposed subsection (4) but is prevented because of a relevant juvenile justice matter that has commenced but has not been finalised under subsection (2)(b), or a relevant charge that has been laid but has not been withdrawn or heard and determined under subsection (2)(c), the last day for applying is postponed until the 21st day after the day on which the making of the application ceases to be prevented by proposed subsections (2)(b) or (c).

Subclause (6) provides that on application under proposed subsection (1) the court may order that the thing that is seized is delivered to the person making the application if the court is satisfied on the balance of probabilities that the person is lawfully entitled to possess that thing.

Subclause (7) provides that the court may adjourn the application if it is satisfied that the thing that has been seized should, for the time being, continue to be retained because it is required for a reason described in proposed section 111(2)(a).

Subclause (8) provides that if the last day for applying under proposed subsection (1) for an order for the delivery of a thing has passed and either no application has been made or each application made has been dealt with without ordering that the thing is delivered to a person, then the thing is to be forfeited to the Crown.

Clause 114 Disposal of thing forfeited

This clause is similar to section 33 in the *Prostitution Act 2000*. This clause provides for the disposal of property forfeited to the Crown under the Act.

Subclause (1) provides that unless proposed subsection (2) prevents such action, the Commissioner may direct that anything forfeited to the Crown under this Act can be sold, destroyed, or otherwise disposed of as he or she thinks fit.

Subclause (2) provides that if anything is forfeited to the Crown by an order under proposed section 112(1)(a) or after an order dismissing an application under proposed section 113(1), the Commissioner is not to give a direction under proposed subsection (1) before time allowed for instituting an appeal against an order has expired if an appeal is lodged within that time, and before the determination of the appeal.

Clause 115 Powers to assist seizing things

This clause is similar to section 34 in the *Prostitution Act 2000*.

This clause provides that the *Criminal Investigation Act 2006* sections 146 to 150, with any necessary changes, apply to seizing a thing that is able to be seized under this Act.

Division 5 – Prohibition orders

Clause 116 Terms used

This clause provides the meaning of certain terms used in this Division of the proposed Act.

employer includes a person who engages another person to work under contract of services.

prohibition order means an order made under section 120;

relevant person means the person who, as the case requires, is the subject of:

- (a) an application under section 117; or
- (b) a prohibition order.

specified means specified in a prohibition order.

Clause 117 Commissioner may apply for prohibition orders

The clause provides that the Commissioner can apply to the CEO for an order to be made to prohibit a person from either working in specified situations in the prostitution industry; or from entering specified prostitution businesses, which can be used to prevent certain individuals from using the services of specified prostitution businesses.

Sub subparagraph (a)(i) provides that the Commissioner can apply to the CEO for an order to prohibit a person from working for a specified business involving the provision of prostitution.

Sub subparagraph (a)(ii) provides that the Commissioner can apply to the CEO for an order to prohibit a person from working for a prostitution business of a specified class.

Sub subparagraph (a)(iii) provides that the Commissioner can apply to the CEO for an order to prohibit a person from working for any prostitution business which will prohibit a person from working in the prostitution industry.

Sub subparagraph (b)(i) provides that the Commissioner can apply to the CEO for an order to prohibit a person from entering a specified place from which a prostitution business is conducted.

Sub subparagraph (b)(ii) provides that the Commissioner can apply to the CEO for an order to prohibit a person from entering a place from which a prostitution business of specified kind is conducted.

Sub subparagraph (b)(iii) provides that the Commissioner can apply to the CEO for an order to prohibit a person from entering any place from which a prostitution business is conducted. This will prohibit a person from using the services of any prostitution business in the State.

Clause 118 Evidence in support of application

This clause provides that there must be certain information to support an application for a prohibition order for the CEO to consider.

Subclause (1) provides that an application under section 117 must include certain things.

Subparagraph (a) provides that an application must set out the reasons in support of the Commissioner's opinion that a prohibition order should be made in respect of the relevant person.

Subparagraph (b) provides that an application must set out any other information and be accompanied by any document that the Commissioner considers relevant to the application.

Subclause (2) provides that without limiting subsection (1), the Commissioner is authorised to include in or with the application certain things.

Subparagraph (a) provides that the Commissioner is authorised to include in an application details of any criminal convictions of the relevant person for offences under the law of the Commonwealth or a State or Territory.

Subclause (b) provides that the Commissioner is authorised to include in an application any information that the Commissioner has regarding any involvement, or suspected involvement, of the relevant person in serious and organised crime as defined in the *Australian Crime Commission (Western Australia) Act 2004* section 3(1).

Clause 119 Relevant person to be given notice of application

This clause ensures that a person who is the subject of an application for a prohibition order is informed of the application in writing which will provide the person with the opportunity to challenge the application if he or she wishes to do so.

Subclause (1) provides that the CEO must give the relevant person a written notice that that an application has been made for a prohibition order.

Subparagraph (a) provides that the written notice must state that the application has been made and explain the proposed effect of the order that has been applied for.

Subparagraph (b) provides that the written notice must describe the information and documents provided in support of the application.

Subparagraph (c) provides that the written notice must inform the relevant person that he or she will be given a reasonable opportunity to make submissions or to be heard in relation to the application.

Subclause (2) provides that nothing in proposed subsection (1) requires or authorises the CEO to disclose confidential police information.

Clause 120 CEO may make prohibition orders

This clause gives direction to the CEO on how to deal with an application for a prohibition order.

Subclause (1) provides the circumstances under which the CEO may dispose of the application for a prohibition order.

Subparagraph (a) provides that the CEO may disposed of the application by making a prohibition order.

Subparagraph (b) provides that the CEO may disposed of the application by dismissing the application.

Subparagraph (c) provides that the CEO may disposed of the application at the request of the Commissioner, by discontinuing the application.

Subclause (2) provides for the things that the CEO may prohibit by making a prohibition order.

Subparagraph (a) provides that the CEO may prohibit the relevant person from working for any of the following:

- (i) a specified business involving the provision of prostitution;
- (ii) a prostitution business of a specified class; or
- (iii) any prostitution business.

Subparagraph (b) provides that the CEO may prohibit the relevant person from entering any of the following:

- (i) a specified place in which a prostitution business is conducted;
- (ii) a place in which a prostitution business of a specified kind is conducted; or
- (iii) any place in which a prostitution business is conducted.

Subclause (3) provides that the CEO may make a prohibition order only if satisfied that it is in the public interest to do so after all of the following things have occurred:

Subparagraph (a) provides that the CEO may make a prohibition order after having given the relevant person a reasonable opportunity to make submissions or to be heard in relation to the application.

Subparagraph (b) provides that the CEO may make a prohibition order after having regard to all of the following:

- (i) any information or document provided by the Commissioner in or with the application; and
- (ii) any information or document provided by the relevant person under paragraph (a).

Subclause (4) provides that a prohibition order has effect subject to the terms or conditions as the CEO thinks fit and specifies in the order.

Clause 121 Term of prohibition orders

This clause provides direction on the length of time a prohibition order can be made to be in force.

Subclause (1) provides that the CEO must specify in a prohibition order the term for which the prohibition order remains in force.

Subclause (2) provides that the term cannot be for less than one year or more than 5 years after the prohibition order is made. An application may be made for a further prohibition order following the expiry of an order which can lengthen the time a person is prohibited from doing something under the relevant provision of the Act relating to prohibition orders.

Clause 122 Applications to vary or revoke prohibition orders

This clause ensures that a prohibition order can be varied or revoked should circumstances change that necessitates an order to be varied or revoked.

Subclause (1) provides that the Commissioner or the relevant person may apply to the CEO in a form approved by the CEO for an order to vary or revoke a prohibition order.

Subclause (2) provides details about who will be the respondent when an application to vary or revoke a prohibition order is made.

Subparagraph (a) provides that if an application to vary or revoke a prohibition order is made by the Commissioner, the relevant person is the respondent.

Subparagraph (b) provides that if an application to vary or revoke a prohibition order is made by the relevant person, the Commissioner is the respondent.

Subclause (3) provides that the application to vary or revoke a prohibition order must include all of the following:

Subparagraph (a) provides that the application must set out the reasons in support of the applicant's opinion that the prohibition order should be varied or revoked.

Subparagraph (b) provides that the application must set out any other information and be accompanied by any document that the applicant considers relevant to the application.

Clause 123 Respondent to be given notice of application

This clause ensures that the respondent is informed that an application to vary or revoke a prohibition order has been made to the CEO.

Subclause (1) provides that the CEO must give the respondent a written notice that an application to vary or revoke a prohibition order has been made.

Subparagraph (a) provides that the written notice must state that the application under section 122 has been made and explains the proposed effect of the order that has been applied for.

Subparagraph (b) provides that the written notice must describe the information and documents provided in support of the application.

Subparagraph (c) provides that the written notice must inform the respondent that he or she will be given a reasonable opportunity to make submissions or to be heard in relation to the application.

Subclause (2) provides that nothing in subsection (1) requires or authorises the CEO to disclose confidential police information.

Clause 124 CEO may vary or revoke prohibition orders

This clause gives direction to the CEO on how to deal with an application to vary or revoke a prohibition order.

Subclause (1) provides circumstances under which the CEO may dispose of an application under section 122.

Subparagraph (a) provides that the CEO may dispose of an application under section 122 by making an order that varies or revokes a prohibition order.

Subparagraph (b) provides that the CEO may dispose of an application under section 122 by dismissing the application.

Subparagraph (c) provides that the CEO may dispose of an application under section 122 by discontinuing the application at the request of the applicant

Subclause (2) provides that the CEO may make an order to vary or revoke a prohibition order only if satisfied that it is in the public interest to do so after all of the following things have occurred :

Subparagraph (a) provides that the CEO must have given the respondent a reasonable opportunity to make submissions or to be heard in relation to the application.

Subparagraph (b) provides that the CEO must have regard for:

- (i) any information or document provided by the applicant in or with the application; and
- (ii) any information or document provided by the respondent under paragraph (a).

Clause 125 Notification of orders

This clause gives direction on who must be given a copy of an order given under this Division. This will include employer to ensure that if a prohibition order is made to prohibit a person from working in a particular business, the relevant person's employer will be informed.

Subclause (1) provides that if the CEO makes a prohibition order, the CEO must give a copy of the order to all of the following:

- (a) to the relevant person; and
- (b) to the Commissioner; and
- (c) if the order is made under section 120(2)(a) and the CEO is aware that the relevant person is working for a business to which the order applies — to the relevant person's employer.

Subclause (2) provides that if the CEO makes an order varying or revoking a prohibition order, the CEO must give a copy of the order to all of the following:

- (a) to the applicant and the respondent; and
- (b) if a copy of the prohibition order that was varied or revoked was given to the relevant person's employer under subsection (1)(c), to that employer.

Subclause (3) provides that the CEO is also to give to the applicant and the respondent written notice of the reasons for the decision to make the order, and the right of review under section 153.

Subclause (4) provides that nothing in subsection (3) requires or authorises the CEO to disclose confidential police information.

Subclause (5) provides that if the State Administrative Tribunal varies or sets aside a decision of the CEO to make, vary or revoke a prohibition order, the CEO must inform the relevant person's employer if the employer was given a copy of the order under subsection (1)(c).

Clause 126 Compliance with prohibition order

This clause provides penalties for person who fails to comply with a prohibition order made against them and for employers who continue to employ a prohibited person.

Subclause (1) provides that a person who is given a copy of a prohibition order under section 125(1)(a) must comply with the order. The penalty for contravening this proposed clause is a fine of \$10 000.

Subclause (2) provides that a person who is given a copy of a prohibition order under section 125(1)(c) must not allow the relevant person to continue working for a business to which the order applies in contravention of the order. The penalty for contravening this proposed clause is a fine of \$10 000.

Division 6 – Barring notices

Clause 127 Terms used

This clause provides the meaning of certain terms used in Division 6.

approved means approved by the Commissioner.

notice means a notice under section 128(1).

specified means specified in a notice.

Clause 128 Barring notices by Commissioner

This clause provides the Commissioner of Police with the power to prohibit certain persons from entering a particular prostitution business or entering any prostitution businesses. This power can be used to prevent clients who have been violent or disorderly from accessing the services provided by prostitution businesses.

Subclause (1) provides that the Commissioner may give a notice to a person prohibiting the person from entering either of the following:

- (a) a specified place in which a prostitution business is conducted;
- (b) a place in which a prostitution business of a specified kind is conducted; or
- (c) any place in which a prostitution business is conducted.

Subclause (2) provides that the Commissioner may give a notice only if the Commissioner believes, on reasonable grounds, that the person has, in a place in which a prostitution business is conducted done any of the following things:

- (a) been violent or disorderly; or
- (b) contravened a provision of any written law.

Subclause (3) provides that the notice given by the Commissioner must be in an approved form.

Subclause (4) provides that the Commissioner is also to give with a notice the reasons for the decision to give the notice, and information about the person's rights of review under subsection (10) and proposed section 153.

Subclause (5) provides that nothing in subsection (4) requires or authorises the Commissioner to disclose confidential police information.

Subclause (6) provides that the notice has effect from the day the notice is given to the person until the first of the following days:

- (a) the specified day;
- (b) if the notice is revoked under subsection (9) — the day that the notice of revocation is given to the person;
- (c) if the decision to give the notice is set aside on review under subsection (11) or proposed section 153 — the day of that decision.

Subclause (7) provides that the specified day cannot be more than 12 months after the day on which the notice is given to the person.

Subclause (8) provides that a person who is given a notice must not enter a place in contravention of the notice. The penalty for contravening this subclause is a fine of \$10 000.

Subclause (9) provides that the Commissioner may revoke a notice by giving the person a notice of revocation in an approved form.

Subclause (10) provides that a person who is aggrieved by a decision of the Commissioner to give a notice to bar that person from a place, or any place, may apply to the Commissioner for a review of the decision.

Subclause (11) provides that the Commissioner, in dealing with an application under subsection (10) may affirm, vary or set aside the decision that is being reviewed.

Subclause (12) provides direction about who the Commissioner is to give a copy of a barring notice to.

Subparagraph (a) provides that the Commissioner may give a copy of a notice to any person who holds an operator's licence or a manager's licence if the Commissioner is of the opinion that it is necessary to do so to minimise the risk of harm or injury to any person.

Subparagraph (b) provides that the Commissioner must give to a person who is given a copy of a notice under paragraph (a) all of the following things:

- (i) a copy of a notice of revocation concerning that notice; and
- (ii) information about any variation or setting aside of the decision to give the notice made by the Commissioner under subsection (10) or by the State Administrative Tribunal.

Division 7 – Closure notices and closure orders

This Division provides police, through the courts, with the power to close down illegal prostitution businesses operating in the State following complaints from members of the public. This clearly provides a mechanism for WA Police to take responsibility for the issue of illegal prostitution and takes the pressure off local government authorities who in the past have been left to deal with complaints about prostitution within their jurisdictions. Police may also seek to close down any prostitution business where certain serious offences have been committed. These offences include inducing a person to act as a prostitute; clients taking part in an act of prostitution with a person in sexual servitude; causing or permitting a child to act as a prostitute, or inducing a child to act as a prostitute; receiving payment from a child taking part in prostitution; and entering into an agreement under which a child is to act as a prostitute.

Clause 129 Terms used

Clause 129 provides the meaning of certain terms used in Division 7.

closure notice means a notice issued under section 130.

closure offence provision means section 11(1), 15(1), 36(1) or (2), 37(1) or 38(1).

closure order means an order made under section 135(2).

specified means specified in a closure notice or closure order.

Clause 130 Closure notice for interim closure of certain places

This clause provides the purposes for which a police officer may issue a closure notice which will act as an interim order to close a place under this Act.

Subparagraph (a) provides that a police officer may issue a closure notice to prohibit any person, other than a person who owns or regularly occupies a specified place, from entering or remaining in the place.

Subparagraph (b) provides that a police officer may issue a closure notice to prohibit a specified visitor, or specified class of visitor to a specified place, from entering or remaining in the place.

Clause 131 Requirements for issue of closure notice

This clause provides the circumstances for which a police officer can issue a closure notice.

Subclause (1) provides that a closure notice may be issued under proposed subsection (2) or (3).

Subclause (2) provides that a closure notice may be issued in relation to a specified place if the issuing police officer believes on reasonable grounds any of the following:

Under subparagraph (a), that an offence under, or an act of prostitution in circumstances mentioned in, a closure offence provision in the Act either;

- (i) has occurred in the specified place; or
- (ii) is occurring in the specified place; or
- (iii) is likely to occur in the specified place if a closure order is not made in relation to the place;

and

Under subparagraph (b), that the making of a closure order is necessary to prevent any offence under, or any act of prostitution in circumstances mentioned in, a closure offence provision in the Act from occurring in the specified place.

Subclause (3) provides that a closure notice may be issued in relation to a specified place if any of the following applies:

Under subparagraph (a) the issuing police officer believes on reasonable grounds that any of the following applies:

- (i) a prostitution business is being conducted in the specified place; and
- (ii) the specified place is not a place to which a current operator's licence, or a current prostitute's licence (self-employed), applies;

and

Under subparagraph (b), the Commissioner has received a written complaint alleging that a prostitution business is being conducted in the specified place:

- (i) from the Department;
- (ii) from a local government; or
- (iii) from 3 unrelated adults.

Subclause (4) provides that in subsection (3)(b)(iii), **3 unrelated adults** means 3 adults each of whom:

- (a) resides in different dwellings; and
- (b) is not —
 - (i) a child or step-child; or
 - (ii) a parent or step-parent; or
 - (iii) a sibling or step-brother or step-sister; or
 - (iv) an aunt or uncle; or
 - (v) a spouse or former spouse; or
 - (vi) a de facto partner or former de facto partner, of either of the other 2 adults.

Subclause (5) provides that a closure notice cannot be issued unless a police officer who is an Assistant Commissioner, the Deputy Commissioner or the Commissioner authorises, orally or in writing, the issue of the notice.

Subclause (6) provides that an authority under subsection (5) that is given orally must be confirmed in writing as soon as is practicable.

Subclause (7) provides that a closure notice cannot be issued unless all of the following have occurred:

Subparagraph (a) provides that a closure notice cannot be issued unless an application has been made to the Magistrates Court for a closure order in relation to the specified premises.

Subparagraph (b) provides that a closure notice cannot be issued unless reasonable steps have been taken to establish the identity of each person who:

- (i) owns, or regularly occupies, the specified place; or
- (ii) owns, or regularly occupies, another place that is adjacent to the specified place whose access to the other place would be impeded if a closure order is made in relation to the specified place;

Subparagraph (c) provides that a closure notice cannot be issued unless reasonable steps have been taken to inform each person mentioned in paragraph (b) of the date, time and place of the hearing of the application for a closure order in relation to the specified place.

Clause 132 Content of closure notice

This clause details the information that must be included in a closure notice.

Subclause (1) provides that a closure notice must include all of the following things:

- (a) be in a form approved by the Commissioner; and
 - (b) state either or both of the following —
 - (i) that a person, other than a person who owns, or regularly occupies a specified place, must not enter or remain in the place;
 - (ii) that a specified visitor or specified class of visitor to a specified place must not enter or remain in the place;
- and
- (c) state that failure to comply with the notice is an offence; and
 - (d) specify the matters mentioned in section 131(2)(a) and (b) or 131(3)(a) and (b) that are relevant to the case; and
 - (e) state the date, time and place of the hearing of the application for a closure order in relation to the specified place; and
 - (f) state that failure to comply with a closure order is an offence.

Subclause (2) provides that if proposed section 131(3)(b)(iii) applies, it is not necessary to specify in the closure notice the identities of the 3 unrelated adults who made the written complaints.

Clause 133 Service of closure notice

Subclause (1) provides that a closure notice is of no effect unless all of the following applies:

- (a) a copy of the closure notice is affixed to a prominent part of the specified place and to each door to the place; and
- (b) a copy of the closure notice is given to all of the following:
 - (i) to at least one person who owns or regularly occupies the place; and
 - (ii) to at least one person who regularly occupies each of the other places that is adjacent to the specified place whose access to the other place would be impeded if a closure order is made in relation to the specified place.

Subclause (2) provides that a police officer may enter and remain in a specified place for the purpose of either of the following:

- (a) affixing a closure notice to a prominent part of the specified place and to each door to the place; or
- (b) giving a notice to a person in accordance with subsection (1)(b).

Subclause (3) provides that the CEO must be given a copy of each closure notice.

Clause 134 Duration of closure notice

This clause provides that a closure notice has effect when section 133(1) has been complied with until the application for the closure order in relation to the specified premises is finalised.

Clause 135 Provisions about making closure order

This clause gives details about applications for a closure order, which will be through the Magistrates Court. This provides a mechanism to ensure closure orders are applied appropriately within the provisions of the Act.

Subclause (1) provides that the Magistrates Court must endeavour to ensure that the first listing date for an application for a closure order is not more than 7 days after the application is made.

Subclause (2) provides that on an application for a closure order in relation to a specified place the Magistrates Court may order either or both of the following:

- (a) that a person, other than a person who owns, or regularly occupies the specified place, must not enter or remain in the place;
- (b) that a specified visitor or specified class of visitor to the specified place must not enter or remain in the place.

Subclause (3) provides that a closure order may be made under subsection (4) or (5).

Subclause (4) provides that the Magistrates Court may make a closure order if it is satisfied (on the balance of probabilities) of either of the following things:

- (a) that an offence under, or an act of prostitution in circumstances mentioned in, a closure offence provision:
 - (i) has occurred in the specified place;
 - (ii) is occurring in the specified place; or
 - (iii) is likely to occur in the specified place if a closure order is not made in relation to the place;

and

- (b) that the making of a closure order is necessary to prevent any offence under, or any act of prostitution in circumstances mentioned in, a closure offence provision from occurring in the specified place.

Subclause (5) provides that the Magistrates Court may make a closure order if it is satisfied (on the balance of probabilities) that:

- (a) a prostitution business is being conducted in the specified place; and
- (b) the specified place is not a place to which a current operator's licence, or a current prostitute's licence (self-employed), applies.

Subclause (6) provides that the Magistrates Court is not to make a closure order unless it is satisfied of the following:

- (a) that reasonable steps have been taken to establish the identity of each person who:
 - (i) owns, or regularly occupies, the specified place; or
 - (ii) owns, or regularly occupies, another place that is adjacent to the specified place whose access to the other place would be impeded if a closure order is made in relation to the specified place;and
- (b) that reasonable steps have been taken to inform each person mentioned in paragraph (a) of the date, time and place of the hearing of the application.

Subclause (7) provides that if a court makes a closure order it may make such ancillary orders as it thinks appropriate in relation to any of the following:

- (a) restrictions on access to a specified part or parts of a specified place;
- (b) restrictions on access by a specified person or specified class of persons including a person who owns, regularly occupies, or visits a specified place; or
- (c) any other matter relevant to the enforcement of the order.

Clause 136 Term of closure order

This clause confirms the term of a closure order, which is not indefinite.

Subclause (1) provides that the court must specify in a closure order the term for which the closure order remains in force.

Subclause (2) provides that the term of a closure order cannot be for more than 6 months after the closure order is made.

Subclause (3) provides that an application may be made for the term of a closure order to be extended but the extended term cannot be for more than 6 months after the original closure order was made.

Clause 137 Service of closure order

This clause confirms when a closure order comes into effect.

Subclause (1) provides that a closure order is of no effect unless a copy of it is affixed to a prominent part of the specified place and to each door to the place.

Subclause (2) provides that a police officer may enter and remain in a specified place for the purpose of affixing a closure order to a prominent part of the specified place and to each door to the place.

Subclause (3) provides that the CEO must be given a copy of each closure order.

Clause 138 Breach of closure notice, closure order

This clause confirms the penalty for a breach of a closure notice or a closure order.

This clause provides that a person must not enter or remain in a place in contravention of a closure notice or a closure order. The penalty for breaching a closure notice or a closure order is a fine of \$12 000 or imprisonment for one year.

Division 8 – Restraining orders

Clause 139 Term used: restraining order

This clause provides that in this Division, unless the contrary intention appears, *restraining order* means a restraining order made under section 140 or 141.

Clause 140 Restraining order to prevent further offence

This clause gives the circumstances under which a court may make a restraining order.

This clause provides that a court may make a restraining order if the court:

- (a) finds that a person has committed either of the following:
 - (i) an offence under section 9 or 10; or
 - (ii) an offence under this Act that is prescribed for the purposes of this section;and
- (b) the court is satisfied that, unless restrained, the person is subsequently likely to commit an offence of a similar kind; and
- (c) the court considers that making the order would be appropriate in the circumstances.

Clause 141 Restraining order against person who could be required to move on

This clause is similar to a section 38 in the *Prostitution Act 2000*.

This clause provides the circumstances under which a police may apply for a restraining order against a person who has been issued with a move on notice, obeys the notice and subsequently continues the behaviour that gave rise to that notice at another time. The aim is to provide police with the means to deal with street soliciting.

Subclause (1) provides that if circumstances arise that would give sufficient grounds for a police officer to give a person a direction under proposed section 106 and that person has previously been given a direction under that provision, the police officer may apply for a restraining order against the person.

Subclause (2) provides that the application must be made under the following circumstances:

- (a) if the person against whom the order is sought is a child, to the Children's Court; or
- (b) otherwise, to the Magistrates Court.

Subclause (3) provides that if the court to which the application is made considers it appropriate in the circumstances to do so, it may make a restraining order.

Clause 142 Provisions about making the order

This clause is similar to a section 39 in the *Prostitution Act 2000*.

This clause provides that the courts are not to make a restraining order against a person unless that person is given an opportunity to be heard by a court.

Subclause (1) provides that a court is not to make a restraining order against a person unless the person has been given an opportunity to be heard on the matter.

Subclause (2) provides that if a restraining order has been, or is about to be, made against a person and the person is present, the court may order the person to remain in a place designated by the court for a period of not more than one hour until the order is served on the person.

Clause 143 Terms of restraining order

This clause is similar to a section 40 in the *Prostitution Act 2000*.

This clause gives the court the power to impose restraints on the lawful activities and behaviour of that person to prevent any further offences from being committed or the likelihood of giving rise to the police officer issuing them with a further move on notice.

Subclause (1) provides that if the restraining order is made under section 140, it may impose any restraints on the lawful activities and behaviour of the person against whom it is made that the court considers appropriate to prevent the person from subsequently committing an offence similar in kind to the offence the person is found to have committed or from subsequently giving a police officer grounds for giving the person a direction to move on under section 106.

Subclause (2) provides that if the restraining order is made under section 141, it may impose any restraints on the lawful activities and behaviour of the person against whom it is made that the court considers appropriate to prevent the person from subsequently giving a police officer grounds for giving the person a direction to move on under section 106.

Subclause (3) provides that without limiting the restraints that may be imposed, the order may restrain the person against whom it is made from either of the following:

- (a) being in or near a specified place or in a specified locality or place;
or
- (b) engaging in behaviour of a specified kind, either at all or in a specified place, at a specified time, or in a specified manner.

Subclause (4) provides that in subsection (3) *specified* means specified in the order.

Subclause (5) provides that a restraint may be imposed absolutely or on any terms the court considers appropriate.

Subclause (6) provides that a restraining order may restrain the person against whom it is made from entering or remaining in a place, or restrict the person's access to a place, even if the person has a legal or equitable right to be there.

Clause 144 Duration of restraining order

This clause is similar to a section 41 in the *Prostitution Act*.

This clause provides for the duration of a restraining order and when it takes effect.

Subclause (1) provides that a restraining order takes effect when it is served on the person against whom it is made or, if a later time is specified in the order, at that time.

Subclause (2) provides that unless it is cancelled sooner, a restraining order remains in effect for the period specified in the order or, if no period is specified, for one year from the day on which it took effect.

Clause 145 Variation or cancellation

This clause is similar to a section 42 in the *Prostitution Act 2000*.

This clause provides that a police officer and a person against whom the order was made may apply to the court to vary or cancel a restraining order.

Subclause (1) provides that an application for the court to vary or cancel a restraining order may be made by a police officer nominated by the Commissioner or, with the leave of the court, by the person against whom the order was made.

Subclause (2) provides for where the application must be made.

Subparagraph (a) provides that if the person against whom the order was made is a child, the application to vary or cancel the restraining order must be made to the Children's Court and must be accompanied by an affidavit in support of the application.

Subparagraph (b) provides that all other applications to vary or cancel the restraining order must be made to the Magistrates Court and must be accompanied by an affidavit in support of the application.

Subclause (3) provides that if subsection (1) requires the leave of the court for an application to be made, the application must be accompanied by an affidavit disclosing all facts material to the application, whether supporting or adverse to the application, that are known to the applicant.

Subclause (4) provides that neither the application nor the affidavit can be served on the person upon whose application the restraining order was made (the *respondent*) unless the court orders under subsection (6) that they must be served on the respondent.

Subclause (5) provides that even though the giving of leave may not be prevented by subsection (7), the court may refuse the application for leave if it considers either of the following apply:

- (a) that the affidavit does not disclose everything required by subsection (3) to be disclosed; or
- (b) that the facts disclosed by the affidavit do not give sufficient reason to vary or cancel the restraining order.

Subclause (6) provides that before the court grants an application for leave it must do the following:

- (a) order that a copy of the application and accompanying affidavit be served on the respondent; and
- (b) give the respondent an opportunity to oppose the application for leave.

Subclause (7) provides that leave is not to be given unless the court is satisfied there has been a substantial change in the relevant circumstances since the restraining order was made.

Subclause (8) provides that the person against whom a restraining order was made and the respondent must be given an opportunity to be heard at the hearing of an application to vary or cancel the order.

Subclause (9) provides that at the hearing of the application to vary or cancel a restraining order, the court may receive as evidence any record of evidence given or affidavit filed in connection with an application for leave mentioned in subsection (3).

Subclause (10) provides that the court may dispose of the application to vary or cancel a restraining order by either of the following:

- (a) dismissing the application;
- (b) making a new restraining order in addition to the original restraining order; or
- (c) cancelling the original restraining order with or without making a new restraining order.

Subclause (10) provides that anything in this Division that applies to a restraining order made in the first instance also applies to a new restraining order made under this section.

Clause 146 Court to notify parties of decision

This clause is similar to a section 43 in the *Prostitution Act 2000*.

This clause provides that if a person who was entitled to be given an opportunity to be heard was not present when the court disposed of the application to vary or cancel a restraining order, the registrar must notify the person of how the application was disposed of.

Clause 147 When cancellation takes effect

This clause is similar to a section 44 in the *Prostitution Act 2000*.

This clause provides that the cancellation of a restraining order has effect if either of the following apply:

- (a) if another restraining order is made when the original order is cancelled, at the time the new order takes effect; or
- (b) otherwise, at the conclusion of the hearing at which the order was cancelled.

Clause 148 Provisions about children

This clause is similar to a section 45 in the *Prostitution Act 2000*.

This clause confirms that a restraining order must not be made against a child under the age of ten years and provides for how an applications for restraining orders for a child is to be made.

Subclause (1) provides that a restraining order must not be made against a child who is under 10 years of age.

Subclause (2) provides that in an application to vary or cancel a restraining order against a child, the Young Offenders Act 1994 section 45 applies as if the matter were proceedings for an offence.

Subclause (3) provides that if the Children's Court hears an application for a restraining order under section 141 against a person or an application to vary or cancel a restraining order against a person in the belief that the person is a child when in fact the person is not a child, the following must apply:

- (a) as soon as it becomes aware the person is not a child, the Children's Court must transfer the matter to the Magistrates Court;
- (b) the Children's Court proceedings are not, for that reason, invalidated; and
- (c) an order made by the Children's Court before it became aware the person was not a child, is as valid and has the same effect as if it had been made by the Magistrates Court.

Subclause (4) provides that if the Magistrates Court hears an application for a restraining order under section 141 against a person or an application to vary or cancel a restraining order against a person in the belief that the person is not a child when in fact the person is a child, the following must apply:

- (a) as soon as it becomes aware the person is a child, the Magistrates Court must transfer the matter to the Children's Court;
- (b) the Magistrates Court proceedings are not, for that reason, invalidated; and
- (c) an order made by the Magistrates Court before it became aware the person was a child, is as valid and has the same effect as if it had been made by the Children's Court.

Subclause (5) provides that if a court transfers a matter to another court under this section, the registrar of each court must give effect to the transfer.

Clause 149 Order not to conflict with family order

This clause is similar to a section 48 in the *Prostitution Act 2000*.

This clause provides that if a court does not have jurisdiction to adjust a family order, within the meaning of the *Restraining Orders Act 1997* section 5, the court is not to make a restraining order that conflicts with that family order.

Clause 150 Regulations relating to restraining order applications

This clause provides that the regulations may provide for the following:

- (a) the making of applications for the making, variation or cancellation of restraining orders; and

- (b) the making of applications seeking leave to make an application for the variation or cancellation of restraining orders; and
- (c) the procedure on the hearing of such applications.

Clause 151 Breach of restraining order

This clause provides that a person must not contravene a restraining order made against the person. The penalty for contravening this clause is a fine of \$5 000.

Division 9 – Undercover officers

Clause 152 Undercover officers

This clause is similar to a section 35 in the *Prostitution Act 2000*.

This clause allows the Commissioner of Police to authorise a police officer to act as an undercover officer for the purposes of this Act.

Subclause (1) provides the meaning of certain terms used in this section.

Minister means the Minister responsible for the administration of the *Police Act 1892*.

offence means an offence under this Act.

undercover officer means a police officer acting as an undercover officer under this section.

Subclause (2) provides that the Commissioner may, in writing, authorise a police officer to act as an undercover officer and may in writing revoke that authority.

Subclause (3) provides that before authorising a police officer to act as an undercover officer the Commissioner must ensure that the police officer is a suitable person to have the functions of, and the immunity given to, an undercover officer.

Subclause (4) provides that the identity or purpose of an undercover officer may, for the time being, be concealed or misrepresented for the purpose of detecting the commission of an offence.

Subclause (5) provides that an undercover officer may do anything specified in the authorisation given by the Commissioner for the purpose of detecting the commission of an offence.

Subclause (6) provides that if an undercover officer does anything as described in subsection (5) all of the following must apply:

- (a) the Commissioner and the undercover officer do not commit an offence and are not liable as a party to an offence committed by another person; and

- (b) the undercover officer's evidence in any proceedings against another person for an offence in connection with which the undercover officer did anything as described in subsection (5) is not the evidence of an accomplice.

Subclause (7) provides that the Commissioner is required, whenever requested to do so by the Minister, to give the Minister a report in writing containing such particulars of the activities of undercover officers as the Minister requires.

Part 9 – Review by State Administrative Tribunal

Clause 153 Review

This Part provides for the things that can be reviewed by the State Administrative Tribunal.

Subclause (1) provides that a person who is aggrieved by a decision, as listed in subparagraphs (a) to (e) below, of the CEO may apply to the State Administrative Tribunal for a review of the decision.

- (a) to refuse to issue or renew a licence; or
- (b) about the imposition, variation or revocation of a licence condition; or
- (c) to suspend or revoke a licence; or
- (d) to make a prohibition order under section 120 or an order varying or revoking a prohibition order; or
- (e) to refuse to give approval under section 180 or about the imposition of a condition on an approval,

Subclause (2) provides that the Commissioner is a party to a review under subsection (1).

Subclause (3) provides that a person who is aggrieved by a decision of the Commissioner to give a barring notice under section 128(1) may apply to the State Administrative Tribunal for a review of the decision, whether or not the person has made an application under section 128(10).

Subclause (4) provides that subsection (3) applies only if the notice either, under subparagraph (a) has effect for one month or longer; or, under subparagraph (b) has effect for any shorter period that, when added to the period of any barring notice previously given to the person in respect of the place or a place of the particular class (as the case requires) that is the subject of the notice, results in the person being prohibited from that place or that class of place for longer than one month in any 12 month period.

Part 9 - Evidence

Clause 154 Allegations in prosecution notices

Subclause (1) provides that *specified* in this section means specified in the prosecution notice.

Subclause (2) provides that in proceedings for an offence under this Act, an allegation in the prosecution notice that at a specified time a licence of a specified kind was or was not in effect in relation to a specified person is to be taken to be proved in the absence of evidence to the contrary.

Subclause (3) provides that in proceedings for an offence under section 18(1), (2) or (4), 19, 20(1) or (2), 21, 22, 23, 24, 25, 26, 28, 31(3) or (4), 32(3), 34(2), 35(2) or 41(1) or (3), an allegation in the prosecution notice that a specified person was operating, managing or conducting a prostitution business is to be taken to be proved in the absence of evidence to the contrary.

Subclause (4) provides that in proceedings for an offence under section 17(2) or (3), an allegation in the prosecution notice that a contract or arrangement was for the promotion or publicising of a specified person as a prostitute or a specified prostitution business is to be taken to be proved in the absence of evidence to the contrary.

Clause 155 Presumptions about intention

This clause is similar to a section 52 in the *Prostitution Act 2000*.

Subclause (a) provides that if, in proceedings for an offence under section 9(1) or 10(1), it is proved that the accused was loitering in or frequenting a place in circumstances giving reasonable grounds for suspecting that the accused had an intention described in section 9(3)(b) or 10(2)(b), it is to be presumed that the accused had that intention unless the contrary is proved.

Subclause (b) provides that if, in proceedings for an offence under section 36(2), it is proved that the accused was doing something in circumstances giving reasonable grounds for suspecting that the person had an intention described in section 36(2), it is to be presumed that the accused had that intention unless the contrary is proved.

Clause 156 Presumptions about nature of advertisements

Subclause (1) provides that if, in proceedings for an offence under section 27(1), it is proved that there are reasonable grounds for suspecting that an advertisement was either, under subparagraph (a), for a prostitution business; or, under subparagraph (b) to the effect that a particular person is available to act as a prostitute, it is to be presumed that the advertisement was for a prostitution business, or to the effect that a particular person is available to act as a prostitute, unless the contrary is proved.

Subclause (2) provides that subsection (1) applies or does not apply in certain circumstances.

Subparagraph (a) provides that proposed subsection (1) applies if the accused is alleged to have placed, or to have sought to place, the publication of the advertisement that is the subject of the charge; but subparagraph (b) provides that subsection (1) does not apply if the accused is alleged to have published the advertisement that is the subject of the charge.

Clause 157 Accused presumed to know if person is a child

This clause is similar to a section 49 in the *Prostitution Act 2000*.

This clause puts the onus on the client to ensure they do not pay for the services of a child

The clause provides that if, in proceedings for an offence under this Act, it is relevant whether or not a person was a child, it is to be conclusively presumed that the accused knew that the person was a child unless it is proved that, having taken all reasonable steps to find out the age of the person concerned, the accused believed on reasonable grounds, at the time the offence is alleged to have been committed, that the person concerned had reached 18 or more years of age.

Clause 158 Person residing with child prostitute presumed to receive payment

This clause is similar to a section 50 in the *Prostitution Act 2000*.

If in proceedings for an offence under section 37(1) it is proved that, at the time of the offence, the accused was residing with a prostitute who was a child, the accused is presumed to be guilty of the offence unless the contrary is proved.

Clause 159 Accused presumed to have allowed presence of child

This clause is similar to a section 51 in the *Prostitution Act 2000*.

If, in proceedings for an offence under section 40, it is proved that a child was in a place at a particular time, the accused is conclusively presumed to have allowed the child to enter or remain in the place unless it is proved that the accused did not know, and could not reasonably have known, that a child was in the place at that time.

Clause 160 Presumptions about operating or managing prostitution business without licence

This clause provides that if, in proceedings for an offence under section 45(1) or (4) or 46(1), it is proved that the accused was present in a place and any of the following applies:

- (a) the content, or manner of publication, of an advertisement gave reasonable grounds for suspecting that:

- (i) a prostitution business was being conducted in the place; or
- (ii) a particular person was available to act as a prostitute in the place;

or

- (b) also present in or outside the place were one or more persons who had been convicted of, or dealt with by way of infringement notice for, an offence under Part 2, 3, 5 or 6 of this Act or under the *Prostitution Act 2000* Part 2 or 3; or
- (c) the content, or manner, of a communication given by a person in the place gave reasonable grounds for suspecting that that person or another person was available to take part in an act of prostitution, whether in the place or elsewhere,

it is to be presumed that the accused was operating or managing a prostitution business, as is relevant to the case, unless the contrary is proved.

Clause 161 Presumptions about acting or operating as a prostitute without licence or without verifying identity etc. for operator

If, in proceedings for an offence under section 47(1) or (2), it is proved that the accused was present in a place and any of the following applies:

- (a) the content, or manner of publication, of an advertisement gave reasonable grounds for suspecting that —
 - (1) a prostitution business was being conducted in the place; or
 - (2) a particular person was available to act as a prostitute in the place;

or

- (b) also present in or outside the place were one or more persons who had been convicted of, or dealt with by way of infringement notice for, an offence under Part 2, 3, 5 or 6 of this Act or under the *Prostitution Act 2000* Part 2 or 3; or
- (c) the content, or manner, of a communication given by a person in the place gave reasonable grounds for suspecting that that person or another person was available to take part in an act of prostitution, whether in the place or elsewhere,

it is to be presumed that the accused was acting as a prostitute, or operating a prostitution business, in the place, as is relevant to the case, unless the contrary is proved.

Clause 162 Certificate evidence about licences

Subclause (1) provides that in this section *specified* means specified in a certificate.

Subclause (2) provides that for the purposes of any proceedings under this Act, a certificate purporting to be signed by the CEO or any person authorised by the CEO for that purpose and stating any of the following:

- (a) that on a specified date or during a specified period a person specified in the certificate was or was not the holder of an operator's licence, a manager's licence, a prostitute's licence (general) or a prostitute's licence (self-employed);
- (b) any condition imposed under section 64 in respect of a specified licence;
- (c) any other matter contained in the register at any time in respect of a specified licence or specified person,

is evidence of the facts stated in the certificate.

Clause 163 Certificate that undercover officer was authorised

This clause is similar to a section 53 in the *Prostitution Act 2000*.

This clause provides that a certificate purporting to be signed by the Commissioner or any person authorised by the Commissioner for that purpose and stating that the person named in that certificate was, at the time or during the period specified in that certificate:

- (a) a police officer acting as an undercover officer under section 152; and
- (b) authorised to do anything stated in the certificate,

is evidence of the facts stated in the certificate.

Clause 164 Presumptions about authority to do certain things

Subclause (1) provides that in the absence of evidence to the contrary, proof is not required in any proceedings for an offence under this Act:

- (a) that the prosecutor is authorised to commence the prosecution; or
- (b) that the prosecutor has the Commissioner's approval if required under section 167(3); or
- (c) that a signature on the prosecution notice alleging the offence is the signature of a person authorised to commence the prosecution.

Subclause (2) provides that in the absence of evidence to the contrary, proof is not required in any proceedings under this Act:

- (a) that what purports to be a certificate under section 162 or 163, is the certificate that it purports to be; or
- (b) of the signature or proof that the person signing was a person who could give the certificate.

Subclause (3) provides that for the purposes of any proceedings under this Act, it is not necessary to prove the appointment or authorisation of:

- (a) the CEO; or
- (b) the Commissioner, an Assistant Commissioner or Deputy Commissioner of Police or any other police officer; or
- (c) an authorised person as defined in section 92,

and a signature purporting to be the signature of such an office holder is evidence of the signature it purports to be.

Clause 165 Possession of quantity of sheaths not evidence of offence

Subclause (1) provides that in this section the term *being involved in prostitution* includes the following:

- (a) taking part in, or seeking to take part in, an act of prostitution;
- (b) inviting or otherwise seeking another person to take part in an act of prostitution;
- (c) being involved in any business through which prostitution is provided.

Subclause (2) ensures that any person considering engaging in an act of prostitution in circumstances contrary to this Act is not deterred by fear of prosecution from possessing sheathes in any quantity.

Subclause (2) provides that in proceedings for an offence under this Act, evidence relating to a person's possession of any quantity of sheaths as defined in section 30 is not, of itself, evidence of that person, or any other person, being involved in prostitution.

Part 10 – Prostitution Account

Clause 166 Prostitution Account

This clause provides for the establishment of a special purpose account under the *Financial Management Act 2006*. A proportion of fees from licences required under Part 6 of the Act; fines paid in respect of a conviction for an offence under the Act; money paid as a modified penalty stated in each infringement notice issued for an offence under the Act; money appropriated by Parliament; and money from donations or by other lawful means will be paid into the account. The money in the account will be used for support and information for people who wish to stop working in the prostitution industry; and enforcement of the Act.

Subclause (1) provides that in this Part the term *Minister* means the Minister to whom the administration of this Part is for the time being committed by the Governor.

Subclause (2) provides that an agency special purpose account called the Prostitution Account is established under the *Financial Management Act 2006* section 16.

Subclause (3) provides that there is to be credited to the Account the following:

- (a) the prescribed proportion of each fee paid under Part 6; and

- (b) each fine paid in respect of a conviction for an offence under this Act; and
- (c) the money paid as a modified penalty stated in each infringement notice issued for an alleged offence under this Act; and
- (d) any money appropriated by Parliament for the purposes of the Account; and
- (e) any money received by way of donation, or otherwise lawfully received, for the Account.

Subclause (4) provides that for the purposes of the *Financial Management Act 2006* and the *Auditor General Act 2006* the Account is to be administered by the department of the Public Service principally assisting the Minister in the administration of this Part.

Subclause (5) provides that money standing to the credit of the Account may be paid out of the Account at the direction of the Minister, as reimbursement or otherwise:

- (a) for a purpose associated with the administration of this Act including the provision of support and information to people who wish to stop working in the prostitution industry; or
- (b) for a purpose associated with the enforcement of this Act; or
- (c) for the purpose of refunding, in whole or in part, a fee if the refund is in accordance with the regulations.

Part 11 – General provisions

Clause 167 Prosecutions

This clause provides for who can prosecute for an offence under the Act. This includes a police officer and, for certain offences, relating to licence matters, a prosecution can be commenced by the CEO of the licensing authority.

Subclause (1) provides that a prosecution for an offence under this Act can be commenced only by a police officer.

Subclause (2) provides that despite subsection (1), a prosecution for an offence under Part 3 or 6 or section 16, 17(2), 94 or 103(1) or (2) can be commenced by the CEO of the licensing authority.

Subclause (3) provides that a prosecution for an offence under section 45(1) or (4), 46(1) or 47(1) or (2) requires the approval of the Commissioner of Police if the prosecutor intends to rely on one or more of the presumptions (ie. presumption of guilt unless proven otherwise) under section 160 or 161.

Subclause (4) provides that subsections (1), (2) and (3) do not limit the functions of the Director of Public Prosecutions under the *Director of Public Prosecutions Act 1991* section 11.

Subclause (5) provides that all prosecutions for simple offences under this Act must be heard in a court of summary jurisdiction constituted by a magistrate.

Clause 168 Issue of infringement notice to be preferred for first offences under s.47(1)

This clause, which relates to a person acting as a prostitute, reflects the policy intention to keep first offenders out of the court system by providing that a police officer may issue an infringement notice in preference to commencing a prosecution for an offence under proposed section 47(1) which relates to a person who is 18 years or older being prohibited from acting as a prostitute in a place where no current operator's licence applies to the place; or the person who is acting as a prostitute does not hold a current prostitute's licence (general), or has not complied with proposed section 22(b), which provides that the operator of a prostitution business must be satisfied as the prostitute's identity, that they have reached the age of 18 years, and is either an Australian citizen or a permanent resident in Australia.

Subclause (1) provides that a police officer is to issue an infringement notice in preference to commencing a prosecution for an offence under section 47(1) if all of the following apply:

- (a) the alleged offender has not been convicted of an offence under section 47(1);
- (b) the alleged offender has not been dealt with by way of infringement notice for an offence under section 47(1); and
- (c) it is otherwise appropriate to do so having regard to the circumstances of the alleged offender or the offence.

Subclause (2) provides that nothing in subsection (1) affects a decision as to whether to issue an infringement notice for a second or subsequent offence under section 47(1).

Clause 169 Penalties for bodies corporate

This clause provides that the penalty for a body corporate does not affect the operation and applicability of section 40(5) of the *Sentencing Act 1995* in relation to an offence under the proposed Act that does not provide for a penalty for a body corporate.

Clause 170 Protection from liability

This clause provides protection from the liability of an action in tort.

Subclause (1) provides immunity to persons when acting in good faith in the performance of a function under the proposed Act. This sub clause is similar to subsection 56(1) in the *Prostitution Act 2000*.

Subclause (2) qualifies the protection afforded in sub clause (1) which applies despite the thing being done whether or not the proposed Act has been enacted. This sub clause is the same as subsection 56(2) in the *Prostitution Act 2000*.

Subclause (3) provides that despite the operation of sub clause (1), the State remains liable, where liability exists, for a person having done anything as described in sub clause (1).

Subclause (4) provides that reference to doing anything in this clause also includes the failure and omission to do anything.

Clause 171 Exchange of information between State authorities

This clause provides the governance for the exchange of information between State authorities. The clause contains similar wording to section 57 the *Prostitution Act 2000*.

Subclause (1) provides that a State authority specified in proposed subsection (4) may disclose to another State authority specified in subsection (4) any information in relation to the performance of a function of the State to which the information is disclosed.

Subclause (2) confirms that if an administrative head requests another administrative head to disclose any information, the head receiving the request must comply with the request.

Subclause (3) confirms that nothing in this proposed section authorised the disclosure of confidential police information.

Subclause (4) confirms the State authorities specified in the proposed subsection as being all of the following:

- (a) the CEO (who is the administrative head) any persons employed in the Department;
- (b) the Commissioner (who is the administrative head), police officers, and persons employed in the department of the Public Service principally assisting in the administration of the *Police Act 1892*;
- (c) the chief executive officer of the department of the Public Service principally assisting in the administration of the *Young Offenders Act 1994* (who is the administrative head) and persons employed in that department; and
- (d) the chief executive officer of the department of the Public Service principally assisting in the administration of the *Children and Community Services Act 2004* (who is the administrative head) and persons employed in that department.

Subclause (5) provides that the authority in this proposed section to disclose information applies even though the disclosure may be contrary to any duty of confidentiality imposed by law or whether the duty of confidentiality arose before the Act commences. A person to whom confidential information is disclosed under the clause is bound by the same duty of confidentiality as applied to the person making the disclosure.

Subclause (6) provides that a person who makes a disclosure under this proposed section will not incur a civil or criminal liability as a result of the disclosure and it will not be a breach of the duty of confidentiality.

Clause 172 Confidentiality

The clause is similar to section 58 of the *Prostitution Act 2000*.

Subclause (1) provides details of the circumstances in which a police officer or other person engaged in the performance of functions under this Act can record, disclose or make use of any information obtained in the performance of functions under the Act. The penalty for contravening this subclause will be a fine of \$5,000.

Subclause (2) clarifies that statistical information that does not lead to the identification of any person that it relates to can be disclosed.

Clause 173 Liability of managerial officer for offence by body corporate

The clause is similar to section 59 of the *Prostitution Act 2000*, although the definition of *managerial officer* has been amended.

This clause provides that each managerial officer of a body corporate is culpable for offences committed by the body corporate. A defence exists and the onus rests with the managerial office to show that the offence was committed without the person's consent or connivance, and that the person exercised all due diligence to prevent the commission of the offence, given the nature of their functions. This clause ensures all members of a body corporate will act in a responsible manner in the management of a prostitution business.

Subclause (1) defines the term *managerial officer* used in this clause which will mean:

- (a) a director or secretary of the body; or
- (b) a person who at any time takes responsibility for the management of a business conducted by the body; or
- (c) if the body is a proprietary company, a person who is a shareholder of the body.

Subclause (2) clarifies that if a body corporate is found to have committed an offence under the Act then each person who is a managerial officer of the body is to be treated as having committed the offence unless they can prove that the offence was committed without the person's consent or connivance; and the person had exercised due diligence to prevent the commission of the offence.

Clause 174 Liability of operator for offence by manager

Subclause (1) provides that each operator of a prostitution business who holds an operator's licence will be liable for an offence committed by a manager of the business who holds a manager's licence.

Subclause (2) provides that a person who holds an operator's licence for a prostitution business is not to be treated as having committed the offence committed by a manager of the business who holds a manager's licence if the offence was committed without the person's consent or connivance; and the person had exercised due diligence to prevent the commission of the offence.

Clause 175 Regulations

Subclause (1) provides that the Governor may make regulation prescribing all matters that are required or permitted by the Act to be prescribed or are necessary or convenient to be prescribed to give effect to the purposes of the Act.

Subclause (2) provides that, without limiting subsection (1) regulations may prescribe the fees to be paid for the purposes of the Act and the persons liable for payment.

Subclause (3) provides that without limiting section 45A of the *Interpretation Act 1984* a power conferred under the proposed Act to prescribe a fee for a licence includes power to prescribe a fee that will allow recovery of expenditure for support and information to people who wish to stop working in the prostitution industry. This information and support will be provided by a new service that will be established by the Government to work with people who wish to exit the industry.

Subclause (4) provides that the regulations may provide that contravention of a regulation is an offence, and provide that for an offence against the regulations, a penalty not exceeding a fine of \$6,000 may apply.

Clause 176 Review of Act

Subclause (1) provides that the Minister responsible for the Act must carry out a review of the operation and effectiveness of the Act as soon as practicable after the third anniversary of the commencement of this proposed section.

Subclause (2) provides that the Minister responsible for the Act must prepare a report based on the review and cause the report to be laid before each House of Parliament as soon as practicable after the report is prepared.

Part 12 – Repeals, transitional provisions

Division 1 – Repeals

Clause 177 Prostitution legislation repealed

This clause repeals the *Prostitution Act 2000*, the *Prostitution Amendment Act 2008* and the *Prostitution (Restraining Orders) Regulations 2000*.

Division 2 – Transitional provision arising from the enactment of the *Prostitution Act 2011*

Clause 178 Terms used

This clause defines certain terms used in Division 2 to ensure the provisions are applied as intended.

commencement day in this Division means the day clause 177(1) comes into operation.

repealed Act means the *Prostitution Act 2000*.

Clause 179 Duration of licences issues in first year

This clause provides that the duration of a licence issued in the period ending 12 months after commencement day, to a period of no more than 3 years and 6 months. This clause applies despite clause 66(1).

This will enable the licensing authority to issue licences for periods of between 3 years, and 3 years and 6 months which will prevent administrative problems that may arise if all licences fell due for renewal at the same time.

Clause 180 Planning requirements as to existing prostitution businesses

This clause provides the planning requirements applicable to existing prostitution businesses that have operated as a prostitution business on a continuous basis since 6 September 2008 or earlier.

Subclause (1) provides that this proposed section applies despite the provisions of Part 6 Division 8, which deals with planning and development controls; and does not apply to a prostitution business operated by a self-employed prostitute.

Subclause (2) provides that irregardless of location, land may continue to be used for the purposes of a prostitution business, in accordance with the approval of the CEO under this proposed section.

Subclause (3) provides that an application to the CEO for approval under this proposed section for land to continue to be used for a prostitution business must be made before the expiry of 3 months from commencement day and in the manner that will be prescribed in regulations.

Subclause (4) provides that the CEO must not approve the use of land for the purposes of a prostitution business unless the following apply:

- (a) the CEO has informed the local government of the district in which the land is located about the application; and
- (b) the CEO has asked the local government whether it is opposed to the land being continued to be used for the prostitution business; and

- (c) the local government is not so opposed.

This provides the relevant local government with the ability to comment on any concerns they may have about the prostitution business continuing to operate at that location for a period not exceeding 18 months after the commencement day. This will include consideration of the impact of the business on the amenity of the local community.

Subclause (5) provides that the CEO must not approve the use of land for the purposes of a prostitution business if an order issued by the Governor under proposed section 88(1) is in effect.

Subclause (6) provides that subject to subsection (4) and (5) the CEO may approve the use of land to be used as a prostitution business for a period not exceeding 18 months from the commencement day if satisfied of the following things:

Under subparagraph (a) the CEO must be satisfied that the land has been used for the prostitution business on a continuous basis since 6 September 2008 or earlier.

Under subparagraph (b) the CEO must be satisfied that in making the decision, the CEO will have regard to matters outlined in subclause (7) and that the business will continue to be managed appropriately.

Subclause (7) provides that the CEO, when considering an application, must liaise with the local government of the district where the land is located and the Commissioner of Police to determine all of the following things:

- (a) whether the way in which the business has been conducted has been the subject of complaints from persons living or working in the area;
- (b) whether the way in which the business is conducted causes, or is likely to cause, disturbance in the neighbourhood; and
- (c) whether conducting the business interferes, or is likely to interfere, with the amenity of the neighbourhood.

Subclause (8) provides that when the CEO decides to refuse to issue an operator's licence, an approval under this proposed section ceases to have effect following any of the following events:

- (a) the period for a review under section 153 of the decision expires without an application for a review being made;
- (b) a review of the decision is finalised and the decision is upheld;
- (c) a judicial review (for jurisdictional error) of an order made or purportedly made under section 88(1) or 89(1) in relation to the operator, or the area in which the business is located, is finalised and the order is upheld,

Subclause (9) provides that regulations may provide for matters relating to dealing with applications, including the imposition of conditions on an approval and giving notice of the right of review under clause 153.

Subclause (10) provides that the regulations cannot require or authorise the CEO to disclose confidential police information.

Clause 181 Licensing requirements for operators of existing prostitution businesses

This clause provides the licensing requirements relating to operators of prostitution businesses that exist prior to commencement of the Act.

Subclause (1) defines that the term *existing prostitution business* which in this section means a prostitution business that may be the subject of an application under clause 180 (has been operating on a continuous basis since 6 September 2008 or earlier).

Subclause (2) provides that where an application for an operator's licence is made within three months of the commencement day by an operator of an existing prostitution business, that business may continue to operate, (i.e. proposed sections 18(1) and 45(1) and (4)(d) do not apply to the business) until either of the following:

- (a) the day on which the licence is issued;
 - (b) if the CEO decides to refuse to issue the licence, the day on which the period of 7 days expires after the period for a review of the decision under section 153 expires without an application for a review being made;
 - (c) if the CEO decides to refuse to issue the licence and the decision is reviewed under section 153, the day on which the period of 7 days expires after the review is finalised;
 - (d) if there is a judicial review (for jurisdictional error) of an order made or purportedly made under section 88(1) or 89(1) in relation to the operator, or the area in which the business is located, the day on which the period of 7 days expires after the review is finalised.
- Section 18(1), referred to in subclause (2), relates to each operator of a prostitution business ensuring that a current licence of each operator is displayed.
 - Section 45(1), referred to in subclause (2), relates to the requirement for operators of a prostitution business to hold a current operator's licence that applies to the place.
 - Section 45(4)(d), referred to in subclause (2), relates to the requirement for a company that operates a prostitution business to hold a current operator's licence for the business that applies to the place.

Subclause (3) provides that proposed sections 49(4)(c) and 55(7)(b) do not apply to the application for the first operator's licence for an existing business but the CEO must not issue the licence unless he or she has given approval under proposed section 180.

- Section 49(4)(c), referred to in subclause (3), relates to an application for the issue of an operator's licence being accompanied by evidence of the responsible planning authority's approval for the prostitution business.
- Section 55(7)(b), referred to in subclause (3), relates to an application for the issue of an operator's licence being accompanied by evidence of the responsible planning authority's approval for the prostitution business.
- Section 180, referred to in subclause (3) relates to planning requirements for existing prostitution businesses.

Subclause (4) provides that proposed section 55(8) and 56 do not apply to an application for the first operator's licence for an existing prostitution business.

- Section 55(8), referred to in subclause (4), provides that individuals who hold an operator's licence are only involved with the operation of one prostitution business when they hold their first operator's licence.
- Section 56, referred to in subclause (4), provides that a separate operator's licence may be issued to a holder of an operator's licence for 2 or 3 prostitution businesses operated by that person, under certain circumstances.

Subclause (5) provides that section 62(a) does not apply to the first operator's licence for an existing prostitution business and instead, it is a condition of the licence that the place in which the prostitution business is conducted has, after the licence is granted, no more than the number of rooms in which persons may take part in acts of prostitution than it had before the licence was granted. This ensures that the existing business can continue to operate with the existing number of rooms it has at the time of the application, but does not increase the number of rooms once the operator's licence has been issued.

- Section 62(a), referred to in subclause (5), provides that it is a condition of every operator that a prostitution business must not have more than the prescribed number of rooms in which persons may take part in acts of prostitution.

Subclause (6) provides that clause 66(1) and 179 do not apply to the first operator's licence for an existing prostitution business and instead, the duration of licence is not to exceed the period for an approval under clause 180 has effect.

- Section 66(1), referred to in subclause (6), provides that a licence must not be issued or renewed for more than 3 years.

- Section 179, referred to in subclause (6), provides that a licence issued in the period ending 12 months after commencement day may be issued for a period not exceeding 3 years and 6 months.

Clause 182 Restraining Orders

This clause provides that restraining orders issued under the provision of the *Prostitution Act 2000* will have the same effect despite that Act being repealed.

Subclause (1) provides that a restraining order that is made under section 37 of the repealed *Prostitution Act 2000* which was still in effect immediately before the commencement day, is to be considered a restraining order made under clause 140 of the proposed Act and is effective on and from the commencement day with the same terms as they applied to the order immediately before commencement day.

Subclause (2) provides that a restraining order that was made under section 38 of the repealed *Prostitution Act 2000* which was still in effect immediately before the commencement day, is to be considered a restraining order made under clause 141 of the proposed Act and is effective on and from the commencement day with the same terms as they applied to the order immediately before commencement day.

Subclause (3) provides that an application for a restraining order that was not finalised, or an application to vary or cancel a restraining order made under Part 5 of the repealed *Prostitution Act 2000* at the time of commencement day, will be taken to be an application for a restraining order, or to vary or cancel a restraining order under Part 7 Division 8 of the Act.

Subclause (4) provides that an appeal initiated, but not completed before commencement day, under section 47 of the repealed *Prostitution Act 2000* must be dealt with as if the repealed Act had not been repealed, and a restraining order that is made or varied as a result of the appeal will be considered to be a restraining order under Part 7 Division 8 on the terms that were applicable when it was made or varied on the appeal.

Subclause (5) provides that subsections (1) and (2) apply only to restraining orders under the repealed *Prostitution Act 2000* that are not the subject of an appeal mentioned in sub clause (4).

Clause 169 Undercover officers

This clause provides that an authority to act as an undercover officer that was made under section 35 of the repealed *Prostitution Act 2000* which was still in effect immediately before the commencement day, is to be taken as an authority made under clause 152(2) and is effective on and from the commencement day with the same terms as they applied to the authority immediately before commencement day.

Part 13 – Amendments to other Acts

Clause 184 Community Protection (Offender Reporting) Act 2004 amended

This clause amends the *Community Protection (Offender Reporting) Act 2004* to delete the term ‘Prostitution Act 2000’ from Schedule 2 of that Act and insert:

Prostitution Act 2011

s.36 Causing, permitting, or seeking to induce
child to act as prostitute

s.37 Obtaining payment for prostitution by a child

Clause 185 Criminal Code amended

Subclause (1) and (2) amends *The Criminal Code* to delete sections 190 and 191.

Subclause (3) amends *The Criminal Code* to delete “girl, who is not a common prostitute or of known immoral character” in section 192(1)(b) and inserts:

girl

Subclause (4) amends *The Criminal Code* to delete paragraph (h) in the section 557K(1) definition of *child sex offender* and inserts:

(h) an offence committed under the *Prostitution Act 2011* section 9(1), 10(1), 36, 37, 38 or 42 that was committed against or in respect of a child; or

Clause 186 Criminal Property Confiscation Act 2000 amended

Subclause (1) provides that this section amends the Criminal Property Confiscation Act 2000.

Subclause (2) provides that in section 131(2):

(a) after paragraph (f) insert:

(ga) for a purpose associated with the administration of the *Prostitution Act 2011* including the provision of support and information to people who wish to stop working in the prostitution industry; and

(b) after each of paragraphs (a) to (e) insert:

and

Clause 187 Evidence Act 1906 amended

Subclause (1) amends the *Evidence Act 1906*.

Subclause (2) amends the definition of *sexual offence* under section 36A(1) to delete paragraph (a) and insert:

(a) under *The Criminal Code* section 186 or the *Prostitution Act 2011* section 11, 38 or 42; or

(b) after each of paragraphs (b) and (ba) inserts:

or

Subclause (3) amends the Second Schedule Part 1 to delete “s. 191 Procuration”.

Subclause (4) amends Schedule 7 Part A clause 1(1)(a) to delete “*Prostitution Act 2000*” and insert

Prostitution Act 2011

Subclause (5) amends Schedule 7 Part B in the item relating to *The Criminal Code* to delete “191 Procuration”.

Subclause (6) amends Schedule 7 Part B to delete the item relating to the *Prostitution Act 2000* and inserts:

Prostitution Act 2011

9(1) Seeking prostitute in or in view of or within hearing of public place

10(1) Seeking client in or in view or within hearing of public place

36 Causing, permitting, or seeking to induce child to act as prostitute

37 Obtaining payment for prostitution by a child

38 Agreement for prostitution by a child

39 Prostitution in place where child is present

40 Allowing child to be in place involving prostitution

42 Acting as a prostitute for a child

Clause 188 Health Act 1911 amended

Subclause (1) provides that this section amends the *Health Act 1911*.

Subclause (2) provides that in section 3(1) delete the definition of *venereal disease*.

Subclause (3) provides that in section 248 delete “venereal disease” and insert:

gonorrhoea, syphilis (including congenital syphilis), soft chancre,
venereal warts or granuloma

Subclause (4) provides that the heading to Part XI is deleted and inserts:

Part XI — Sexually transmissible infections and disorders affecting the reproductive organs

Subclause (5) provides, before section 300 insert:

299. Term used: STI

In this Part —

STI means a prescribed sexually transmissible
infection or a prescribed blood borne virus.

Subclause (6) provide, delete section 310(2).

Subclause (7) provides, in section 330A(1) delete “venereal and other”.

Subclause (8) provides, in the provisions listed in the Table:

(a) delete “a venereal disease” (each occurrence) and insert:

an STI

(b) delete “any venereal disease” (each occurrence) and insert:

an STI

(c) delete “from venereal disease” (each occurrence) and insert:

an STI

Table

s. 300(1) and (2)	s. 300A(1)
s. 307(1), (2), (3), (4) and (5)	s. 309(2) and (3)
s. 310(1)	s. 311(2)
s. 313(1)	s. 314(2)
s. 377(3a)	

Note:

1. The heading to amended section 300 is to read:
Notification of STI
2. The heading to amended section 310 is to read:
Offence to knowingly infect with STI
3. The heading to amended section 311 is to read:
Certain medical practitioners to treat STI free of charge

Clause 189 Liquor Control 1988 amended

Subclause (1) amends the *Liquor Control Act 1988*.

Subclause (2) deletes “thief, prostitute” from section 115(1)(b) and inserts:

thief”

Sub clause (3) amends section 115(4a)(e) to delete “prostitute,”.

Clause 190 Sentencing Act 1995 amended

Subclause (1) amends the *Sentencing Act 1995*.

Subclause (2), in Schedule 1, inserts in alphabetical order:

<i>Prostitution Act 2011</i>	Prostitution Account
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Clause 191 Western Australian College of Teaching Act 2004 amended

Subclause (1) amends the *Western Australian College of Teaching Act 2004*.

Subclause (2) deletes “s.191 Procuring person to be prostitute etc.” from Schedule 2.

Subclause (3) amends Schedule 2 to delete item 2 and insert:

2. *Prostitution Act 2011*

- s. 16 Promoting employment in prostitution industry
- s. 36 Causing, permitting, or seeking to induce child to act as prostitute
- s. 37 Obtaining payment for prostitution by a child
- s. 38 Agreement for prostitution by a child
- s. 39 Prostitution in place where child is present
- s. 40 Allowing child to be in place involving prostitution
- s. 42 Acting as a prostitute for a child

Clause 192 *Workers' Compensation and Injury Management Act 1981* amended

Subclause (1) amends the *Workers' Compensation and Injury Management Act 1981*.

Subclause (2) inserts, after section 11A:

12A. Exclusion of unauthorised prostitutes other than minors and coerced persons

- (1) In this section the following terms have the meaning given to them in the *Prostitution Act 2011* section 3 —
 - act as a prostitute*
 - operator's licence*
 - prostitute's licence (general)*
 - self-employed prostitute*
- (2) A person is deemed not to be a worker for the purposes of this Act while the person acts as a prostitute in a place —
 - (a) that is not a place to which a current operator's licence applies; or
 - (b) to which a current operator's licence applies but —
 - (i) without holding a current prostitute's licence (general); or

- (ii) there has not been compliance with the *Prostitution Act 2011* section 22(b) in respect of the person.
- (3) Subsection (2) does not apply to a person who, at the time the injury occurred, was acting as a prostitute and —
 - (a) had not reached 18 years of age; or
 - (b) was working under coercion.
- (4) A self-employed prostitute is not a worker for the purposes of this Act.

Subclause (3), in section 22 deletes “If it” and inserts:

- (1) If it

Subclause (4), at the end of section 22 inserts:

- (2) The failure by a worker who is a prostitute to comply with the *Prostitution Act 2011* section 31(2), 32(1), 33(1) or 34(1) amounts to serious and wilful misconduct for the purposes of subsection (1)(c) unless the claimant proves that there was a reasonable excuse for the failure.

Subclause (5), after section 31F(7) insert:

- (8A) Despite subsection (6), a worker is entitled to compensation under this Division in respect of an impairment that is AIDS if the impairment resulted from taking part in an act of prostitution in the course of the worker’s employment as a prostitute and when the act of prostitution occurred —
 - (a) it occurred in a place to which a current operator’s licence applied and either —
 - (i) the worker held a current prostitute’s licence (general); or
 - (ii) there had been compliance with the *Prostitution Act 2011* section 22(b) in respect of the worker;
 - or
 - (b) the worker —
 - (i) had not reached 18 years of age; or
 - (ii) was working under coercion.

(8B) In subsection (8A) the following terms have the meaning given to them in the *Prostitution Act 2011* section 3 —

act of prostitution

operator's licence

prostitute

prostitute's licence (general)

Clause 193 Working with Children (Criminal Record Checking) Act 2004 amended

Subclause (1) amends the *Working with Children (Criminal Record Checking) Act 2004*.

Subclause (2) deletes the item relating to the *Prostitution Act 2000* in Schedule 2 and insert:

Prostitution Act 2011

- s. 36 Causing, permitting, or seeking to induce child to act as prostitute
- s. 37 Obtaining payment for prostitution by a child
- s. 38 Agreement for prostitution by a child

Clause 194 Young Offenders Act 1994 amended

Subclause (1) amends the *Young Offenders Act 1994*.

Subclause (2) deletes item 2A in Schedule 2 and inserts:

2A. *Prostitution Act 2011*

- s. 11 Seeking to induce person to act as prostitute
- s. 36 Causing, permitting, or seeking to induce child to act as prostitute
- s. 37 Obtaining payment for prostitution by a child
- s. 38 Agreement for prostitution by a child

Schedule 1 – Offences relevant to granting, renewing operator’s or manager’s licence

Schedule 1 lists the offences for the purposes of proposed section 55(3)(d)(i) and (ii) which are as follows:

Censorship Act 1996 (repealed)

s.60

Child Welfare Act 1947 (repealed)

s.108(1)

Children and Community Services Act 2004

s.192(1) or (2)

Classification (Publications, Films and Computer Games) Enforcement Act 1996

the deleted s.60

s.101

The Criminal Code

s.181

s.186

s.187

s.204(A)

s.204(B)

s.217

s.218

s.219

s.220

s.279

s.280

s.281

s.292

s.293

s.297

s.306

s.320(2) or (3)

s.321(2) or (3)

s.321A(4)

s.324

s.325

s.326

s.327

s.328

s.329
s.330(2) or (3)
s.331B
s.331C
s.331D
s.332
s.333
s.338A
s.338B
s.338C
s.343
s.396
s.397
s.398
s.409
s.563A

Criminal Property Confiscation Act 2000

s.50(1)

Criminal Code Act 1995 (Commonwealth)

s.480.4
s.480.5